

October 5, 2016  
Commission's Secretary  
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Federal Communications Commission  
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Washington, DC 20554  
Deena Shetler: deena.shetler@fcc.gov  
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Re: WC Docket No. 06-210  
CCB/CPD 96-20

**PETITIONERS JOINT REPLY**  
**TO AT&T's SEPTEMBER 30, 2016 COMMENTS**

1) These reply comments are on behalf of 800 Services, Inc., and the 4 Inga Companies (One Stop Financial, Inc., Groups Discounts, Inc., Winback & Conserve program, Inc., and 800 Discounts, Inc.). Herein further referred to as petitioners or Inga Companies.

2) The Commissions Recent Public Notice of 8.11.16 within case 06-210 requested reply Comments by September 12<sup>th</sup> 2016 based upon declaratory ruling requests made by petitioners in June 2016 and July 2016. Under the Administrative Procedures Act the Commission will seek to remove uncertainty and terminate a controversy under the tariff to assist the district court. The facts presented are not in dispute between the parties and the tariff is explicit. Petitioners have therefore clearly met the criteria under the Administrative Procedures Act to request the Commission to issue orders that AT&T has violated both its Tariff No 2 and the FCC *October 1995 Order*. AT&T has responded to all **but one** of the declaratory ruling requests made by petitioners in June and July. The Commissions Public Notice of 8.11.16 requested to comment

on declaratory ruling requests made in June and July 2016. The June 23, 2016 declaratory ruling requests included the following declaratory ruling request:

“Did AT&T violate its Tariff Number 2 by inflicting termination charges on the 4 Inga Company plans in June 1996 and 800 Services, Inc.’s plan in November 1995 that were CSTPII/RVPP (EBO) plans that were under 3 year commitments considering the non-disputed fact and AT&T’s own concession that these plans were never terminated by the 5 petitioners.”

Petitioners have sent 2 emails to AT&T counsel Richard Brown and FCC staff advising AT&T that “it missed” one of the declaratory ruling requests. Petitioners were under no obligation to do so as the FCC Public Notice covered the June 23<sup>rd</sup> 2016 declaratory ruling request filing. **Here as EXHIBIT C** are the emails to AT&T. Petitioners may be wrong but it simply appears that AT&T wants to “Play Ostrich” with this question. AT&T simply applied termination penalties in June 1996 when the CSTPII/RVPP plans were not terminated by AT&T’s own concession until July 1997 under the AT&T /CCI settlement. In the case of 800 Services, Inc AT&T applied the termination charges in November 1995 but 800 Services, never requested the plans be terminated. Petitioners can understand why AT&T wanted to ignore this declaratory ruling request as what can it possibly say? As per AT&T’s settlement agreement with CCI page 2, AT&T simply applied \$17.78 million termination charges in June 1996 but the plans were not terminated until July 1<sup>st</sup> 1997 (“Termination Date”):

- 2 -

**1. Discontinuance with Liability of the Services**

The Plans shall be discontinued with liability pursuant to AT&T F.C.C . Tariff 2 on July 1, 1997 ("Termination Date"), and Customer acknowledges the conversion of the Plans to AT&T as of July 1, 1997. CCI shall not be liable for any charges incurred after that date. CUSTOMER understands that charges of up to \$17.78 million will apply for the discontinuance with liability of the Plans pursuant to the provisions of Tariff 2 (the actual amount of which, once determined in accordance with the provisions of Tariff 2, are referred to as the "Termination Charges").

Not only did AT&T terminate the ONE plan that it claimed could not restructure –AT&T incredibly stopped all payments and terminated all the CSTPII/RVPP plans ----even the plans that had not come close to fiscal year end! This is how badly AT&T wanted the joint petitioners out of business. There are no disputed facts.

3) AT&T's September 1, 2016 and September 30, 2016 filing provides zero legitimate reasons why the Commission should not finally decide all declaratory ruling requests made by petitioners to address controversies and uncertainties. AT&T's pathetic comments only provide the NJ Office of Attorney Ethics, the DC Bar Council, the FCC Ethics Staff and the DC Circuit Courts Ethics Staff additional ammunition to coordinate its efforts to make sure all AT&T's counsels no longer practice law.

4) Petitioners will address AT&T counsels 9.30.16 attempt to revise history.

AT&T page 1 footnote 1:

*See, e.g.,* Emails to FCC Staff *et al.* from Mr. Inga, dated Sept. 13, 2016 (at 8:48 AM), Sept. 13, 2016 (at 10:12 AM), Sept. 14, 2016 (at 9:28 AM), Sept. 14, 2016 (at 2:22 PM). It should be noted that Petitioners have not filed these emails in the docket of this proceeding..

AT&T is correct that the emails to the Commission were not uploaded to the FCC server. Thank you AT&T counsel for reminding petitioners that these emails were not uploaded as petitioners simply forgot to upload them. Therefore, **see here as Exhibit A** the 2 petitioner's emails.

5) AT&T's submissions are lacking in merit and of course present no evidence to support its position. The FCC determined in its Jan 12<sup>th</sup> 2007 FCC Order that the 2006 created controversy of which obligations transfer on a traffic only transfer “did not expand the scope” of the original 1995 referred controversy of whether or not AT&T can use section 2.2.4 Fraudulent Use to prohibit a permissible 2.1.8 traffic only transfer.

6) Even though this is a moot issue AT&T counsels have had the opportunity and ability for 21 years to present evidence that revenue and time commitments transfer on a traffic only transfer! AT&T obviously can't present evidence because no such evidence exists. Yet AT&T counsels continue its "all obligations" fraud on the NJFDC and the FCC. AT&T counsel Mr. Richard Brown III in 1996 advised the Third Circuit that it was "self-evident" that under section 2.1.8 plan obligations don't transfer on a traffic only transfer. AT&T counsel Mr. Richard Brown has never commented on why he stated this to the Third Circuit Court.

7) While the 2006 referral on which obligations transfer is moot AT&T counsel has proved to the FCC it is sticking with its intentional fraud because AT&T has no other "way out." AT&T counsels knows petitioners will not take AT&T's hush money on condition that petitioners will not continue its attorney ethics complaint that is pending resolution of this case. AT&T counsel is aware its simply "in too deep" at this point. Because the "former customer analysis" was found in 2007 after Judge Bassler in 2006 and *after* AT&T had already submitted the "all obligations of the transferor" fraud on the FCC in 2006. As explained in greater detail below, AT&T's reply fails to present any substantive basis for ruling in AT&T's favor on any issues.

8) AT&T's September 30, 2016 comments page 2:

A centerpiece of Petitioners' reply is a blatant misreading of the Commission's *October 1995 Order*, which found that AT&T was no longer a dominant carrier. Contrary to Petitioners' claim, that *Order* did not impose upon AT&T an obligation to make a substantial cause filing with the Commission every time a reseller objected to AT&T's position regarding the meaning of an existing AT&T tariff.

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Indeed, the requirement Petitioners purport to derive from this provision would have resulted in total chaos: every dispute AT&T had with any and all resellers over the course of a 12-month period would have resulted in substantial cause filings, which in turn would have wasted Commission resources.

See petitioners September 12<sup>th</sup> 2016 comments page 15 para 28: Exhibit A and additional excerpts below.

As a general practice, **AT&T grandfathers both existing customers and subscribed customers** (i.e., customers who have submitted a signed order for service) when it **introduces a change to a term plan** (including Contract Tariffs, term plans under Tariffs 1, 2, 9, and 11, Tariff 12 Options and Tariff 15 CPPs), and it commits to continue that process. In exceptional cases, however, grandfathering may not be appropriate either because: (1) a change is necessitated by typographical errors, a service inadvertently priced below costs, rate changes where no individual rates (post-discount) are increased, or other comparable circumstances, or (2) the change is necessary to bring clarity to a non- rate term or condition, where it is necessary to treat all customers alike (such as a change to the provisions for how orders are processed, but not including changes to the body of Contract Tariffs, Tariff 12 Options or Tariff 15 CPPs). In such circumstances, AT&T commits **for a twelve-month period** to offer its customers the following additional protections not required of non-dominant carriers: - **where AT&T makes any change to an existing term plan**, AT&T will afford the affected customers 5 days meaningful advance notice of the tariff filing to give the customer the opportunity to object; provided, however, that for **changes to discontinuance with or without liability**, deposits and advance payments, **or transfer or assignment of service**, AT&T will file on 14-days' notice. (AT&T would have the unaffected right to change underlying tariff rates -- such as a general change to SDN rates -- unless the term plan protected the customer from such changes.) Where the affected customer(s) agrees to the revision, AT&T will note that agreement in its transmittal letter and file the change on 1 day's notice. Where the affected customer objects to the change, AT&T will file the change with the Commission on 6 days' notice. **With respect to the 14 or 6 days notice filings, the substantial cause test will be applicable to the same extent as it is today.**

FCC *October 1995 Order* Further States that AT&T must **voluntarily** comply so it did not make difference that 800 Services, Inc. or the 4 Inga Companies did not know about the *Order*.

FCC *October 1995 Order* at 134:

134. Finally, we note that AT&T has **voluntarily** committed to implement certain measures that are designed to address criticisms of its business practices that resellers have raised in this proceeding **and elsewhere**. AT&T represents that the following reflects an agreement with the Telecommunications Resellers Association, and **AT&T has committed** to comply with this agreement.

FCC *October 1995 Order* Para 136:

We believe that the commitments proffered by AT&T in its October 5, 1995 Ex Parte Letter contribute to addressing the tariff-related concerns raised by the commenters in this proceeding, and **we therefore order AT&T to comply with these voluntary commitments.**

AT&T is ordered by FCC to comply with grandfathering and comply with meeting the substantial cause test and transcend the scope of this proceeding:

FCC *October 1995 Order* at 136 & 137:

We believe that the commitments proffered by AT&T in its October 5, 1995 Ex Parte Letter contribute to addressing the tariff-related concerns raised by the commenters in this proceeding, and we therefore **order AT&T to comply with these voluntary commitments.**

137. We also note that some of the tariff-related issues raised by commenting parties transcend the scope of this proceeding.

The following sections of the FCC October 1995 Order should also be entered into the record: Under the FCC's October 1995 Order the Commission it gives the Commission the ability to decide if AT&T's actions of not meeting the substantial cause test results in the termination of petitioner's CSTPII/RVPP plans contractual revenue commitments. The Commission should determine that the Inga Companies could maintain its pre June 17,1994 plan at the minimum \$600,000 per year CSTPII/RVPP revenue commitment in order to obtain the 28% discount while the locations are on the 66% PSE CT-516 plans:

130. The opposing commenters assert that **AT&T does not now act reasonably with regard to resellers, even under dominant carrier regulation**, and will act more unreasonably if freed from such regulation. To support these contentions, they describe **various pending disputes between AT&T and certain resellers**.

133. Certain commenters raise issues implicating the "substantial cause" test. The "substantial cause" test holds that tariff revisions altering material terms and conditions of a **long-term service tariff** will be considered reasonable only if the carrier can make a showing of substantial cause for the revisions. In response to concerns of IBM and API that AT&T be required to justify any changes to contract-based tariffs, we note that we recently affirmed the applicability of the "substantial cause" test to **tariff revisions that alter material terms and conditions of a long-term contract, and we clarified that this test applies to any unilateral tariff modification by non-dominant as well as dominant carriers**. Accordingly, if AT&T files a modification to a contract-based tariff, we will take into account that the original tariff terms were the product of negotiation and mutual agreement, and we will consider on a case-by-case basis, in light of all the relevant circumstances, whether a substantial cause showing has been made. We will apply the substantial cause test in this way in any post-effective tariff investigation, pursuant to Section 205, and in complaint proceedings. **We also will consider, on a case-by-case basis, whether to allow customers to terminate contracts without liability**.

Full FCC *October 1995 Order* that has already been uploaded in this case here:

[https://transition.fcc.gov/Bureaus/Common\\_Carrier/Orders/1995/fcc95427.txt](https://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1995/fcc95427.txt)

9) If AT&T had adhered to the FCC *October 1995 Order* and filed at the FCC to meet the substantial cause test there would have been **substantial petitions to reject or suspend** as there was when AT&T filed Tr8179. Even if AT&T had met the substantial cause test the key is there would have been dialog regarding the terms and conditions. There would not have been a situation where AT&T can interpret how many times within a 3 year CSTPII/RVPP plan it can

be discontinued without liability (i.e. restructured/upgraded). There would have been explicit detail in the tariff change that addressed the terms and conditions. **There would have been explicit detail regarding whether the language changes post October 1995 were clarifications of the January 1995 tariff sections or prospective changes.** AT&T would not have been able to scam Judge Wigenton and tell her because petitioners were exempt from the security deposits against potential shortfall in November of 1995 that the fundamental terms and conditions of 2.1.8 mandated that plan obligations do not transfer. There would have been no controversy and uncertainty regarding whether a restructured plan did or didn't allow end-users that are on Location Specific Term Plans (LSTP's) to enroll without penalty. It would have also prevented AT&T asserting "primary jurisdiction" to vacate the March 1996 Politan injunction as the FCC would have interpreted any controversies.

10) AT&T's interpretation of what was required under the FCC *October 1995 Order* is comical as according to AT&T it was not worth the paper it was written on! It allowed AT&T to continue interpreting the tariff however it wanted! AT&T was not going to declared a non-dominant carrier unless it adhered to certain conditions under the FCC *October 1995 Order*. AT&T intentionally failed meeting the substantial cause test as it knew it was violating its tariff.

AT&T's stated that it would have resulted in:

**"total chaos:** every dispute AT&T had with any and all resellers over the course of a 12-month period **would have resulted in substantial cause filings** which in turn would have **wasted Commission resources.**"

11) It only resulted in chaos if AT&T violated the tariff. The reality is that the FCC has had to deal with **21 years of total chaos** because AT&T intentionally failed to file substantial cause pleadings in 1995. So is it better that the Commission dealt with "total chaos" and "wasted Commission resources" for 1 year rather than **21 years+**? Yes, AT&T had to voluntarily file. Did AT&T counsel actually write that statement about its "concern for the Commission" without

laughing at its comedy and absurdity? These are the same counsel that tried to pull the “all obligations of the transferor/old plan” fraud on the FCC in 2006.

12) AT&T’s September 30, 2016 comments page 3:

As to Request II, the plain language of AT&T’s tariff makes clear that AT&T appropriately allocated and billed shortfall liability to Petitioners’ customers.

Well if AT&T the plain language of AT&T’s tariff makes it clear that AT&T appropriately allocated and billed shortfall liability to Petitioners’ customers **then why didn’t AT&T just follow its tariff and leave the shortfall and termination penalties on the end-user’s bills?**

What was the point of not adhering to the tariff then by moving the charges a month later ---after the baby was already dead---from the end-user’s bills to petitioner’s bills? The Commission can see petitioners detailed response on page 52 para 110 of petitioners September 12, 2016 comments. **EXHIBIT E** of petitioners 9.12.16 comments is AT&T 800 Customer Specific Term Plan II definitions: The terms and conditions at bullet 10 explicitly state:

“For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.”

13) The tariff is explicit! There is no dispute that AT&T had the right to allocate shortfall and termination if applicable to the end-users, but only up to the discounts each was receiving. AT&T has already conceded in its September 1, 2016 comments that it was an illegal tariff remedy that it tried to correct a month later---but the damage had already been done.

AT&T **September 1, 2016** comments pg. 26

At the same time, **in light of the language** specifying that shortfall “liability” **was ultimately the “responsibility” of the CSTP II customer**, AT&T subsequently removed the charges after they were billed and did not attempt to collect those charges from CCI’s end-users.

14) AT&T counsels are sitting there saying why did we concede in our September 1, 2016 comments that we understood what the “language” meant and thus used an illegal remedy. So AT&T decided to file additional comments on 9.30.16 and **go back** to asserting the tariff allows it and maybe the Commission won’t remember **AT&T’s concession** that it used an illegal

remedy. The parties were explicitly asked by the Commission in 2003 to comment on the relationship between the parties and the end-user locations: FCC *October 2003 Order* page 5:

On February 13, 2003, the Bureau released a Public Notice inviting comment on two discrete questions that were not squarely addressed by the parties on the prior record. Specifically, the Bureau first asked the parties to “comment on the nature of the relationship, if any, between AT&T and the end-user customers of AT&T’s customers, under AT&T’s Tariff FCC No. 2 generally, and specifically under the tariff provisions governing the RVPP and CSTP II Plans at issue in this matter.”<sup>1</sup>

AT&T counsel Aryeh Friedman in 2003 agreed with petitioners that the end-user’s locations were not AT&T customers. AT&T counsel Friedman conceded the end-users were only petitioner’s customers, and thus AT&T had no right to bill shortfall to a **non AT&T customer**. Reducing some or all of a discount from the end-user is **not charging the end-user for shortfall** ---it is in actuality taking the locations **apportioned discount away from the reseller**. That is why it is phrased: “For billing purposes, such penalties shall **reduce any discounts apportioned** to the individual locations under the plan.” The reseller advised AT&T how much discount each of the end-users should receive. [ 15%, 17.5%, 20%, 23% ] of the total 28%. The difference between what the end-user location received and 28% was rebated once per month by AT&T to the reseller.

AT&T’s September 30, 2016 comments page 3:

As to Request III, Petitioners all but admit that there is no immunity period under AT&T’s tariff with respect to shortfall and termination charges incurred in connection with a CSTP II plan, regardless of the start date of the plan.

15) Petitioners did **not** “all but admit that there is no immunity period under AT&T’s tariff with respect to shortfall and termination charges incurred in connection with a CSTP II plan regardless of the start date of the plan.” Petitioners have provided tariff evidence that any pre June 17<sup>th</sup> 1994 ordered plan maintained its terms and conditions until the plan ends and in this case the plan did not end till 3 years. Additionally, the terms and conditions continued at the sole

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<sup>1</sup> The Commission by February 2003 already knew that CCI and AT&T had settled but understood it was a JOINT PETITION and that the Inga Companies were still waiting for FCC Decision and appropriately issued Public Notice.

discretion of the customer for yet another 3 years----and petitioners filed tariff evidence showing the tariff stated the terms and conditions continued into a Contract Tariff for one additional 3-year period when the CSTPII/RVPP EBO product offering was phased out by January 2001.

**See EXHIBIT B** of Petitioners September 12, 2016 Comments

6. Expiration of AT&T's 800 Customer Specific Term Plan II - A CSTP II expires when the three-year term ends. Upon expiration of the Term Plan, the plan will roll-over to a new three-year plan at discount levels applied during the third year of the plan, if the Customer notifies AT&T to renew the term plan. **If the Customer does not notify AT&T to** “renew” the Term Plan, the Customer's service will revert to current (non-term) rates.

See petitioners September 12, 2016 Comments Page 65 para 139 for more details.

16) AT&T's September 30, 2016 comments page 3:

While such liability might have been **avoided** if the CSTP II Plan holder took **certain steps**, the obligations were real and there was no automatic immunity.

Here AT&T is conceding that liability can be “avoided if the CSTP II Plan holder took certain steps” and it is a non-disputed fact that petitioners took those steps. There is no dispute that “the obligations were real and that there was no automatic immunity,” as all you had to do is simply submit an upgraded AT&T Network Services Commitment Form. Judge Politan decided that the fact that petitioner's plans were pre June 17<sup>th</sup> 1994 grandfathered was good enough for his Court in March of 1996 to determine AT&T's “premise on the dangers of shortfalls” was not “properly substantiated.”

March 1996 Politan Decision (page 19 para 1):

**“premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T.**

AT&T’s “certain step” argument is in actuality a concession that since the “certain steps” were taken AT&T should have never inflicted charges against the pre June 17, 1994 grandfathered plans. Judge Politan understood AT&T counsel was scamming him on its sole defense of fraudulent use as the plans were immune due to being ordered prior to June 17th 1994.<sup>2</sup>

**A)** Judge Politan: “Commitments and shortfalls are little more than **illusionary concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring. The only “tangible” concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that **AT&T’s demand for fifteen million dollars’ security is premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T.** **March 1996 District Court Decision pg 19 para 1**

**B)** Judge Politan: “Suffice it to say that, with regard to **pre-June, 1994 plans,** methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T’s own tariff.” **May 1995 Decision pg. 11**

**C)** Judge Politan: “In answer to the court’s questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can and do **escape termination and also shortfall charges** through renegotiating their plans with AT&T.” **May 1995 Decision pg. 24**

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<sup>2</sup> FCC 2003 pg. 2 para 2:

**“Prior to June 17, 1994,** the Inga Companies completed and signed AT&T’s “Network Services Commitment Form” for WATS under AT&T’s Customer Specific Term Plan II (CSTP II), a tariffed plan, which offered volume discounts off AT&T’s regular tariffed rates.”

17) AT&T's September 30, 2016 comments page 3:

As to Request IV, Petitioners sought and obtained a judicial order in May 1995 compelling AT&T to accept the transfer of their plans to CCI, thereby waiving and/or mooted any claim relating to the alleged January 1995 Inga to PSE traffic only transfer.

It's a **JOINT PETITION** not a petition of **only CCI**. The DC Circuit Court Decision *was aware that the plans were transferred and was aware CCI-Settled with AT&T and still stated the Inga Companies have continued claims*. AT&T has not rebutted the DC Circuit Court's findings nor addressed the fact that the plans were not sold---and the AT&T-CCI July 1997 settlement conceded the Inga Companies still had claims. In fact, CCI was requested to cooperate with AT&T to defend AT&T against the Inga Companies continued claims! AT&T has already presented this assertion to Judge Bassler and Judge Wigenton and both ignored it as Judge Bassler issued a referral and Judge Wigenton advised the Inga Companies to seek writ of mandamus to get the FCC to rule for the Inga Companies. There is also the Inga to PSE transfer to consider as Judge Politan stated both traffic transfers are within the case complaint-----**so petitioners have the option to decide which traffic only transfer it will seek damages on**. This is the same argument that AT&T provided on 9.1.6 and petitioners provided MANY reasons why AT&T's argument is complete nonsense and have added more reasons. See several additional non rebutted FACTS with exhibits, covering the many reasons why the Inga Companies still have claims in petitioners September 12, 2016 comments on page 2 para 5 through page 13 para 26.

AT&T's September 30, 2016 comments page 3:

Moreover, even if the claim were not waived and mooted (and it is), AT&T's tariff makes clear that AT&T was under no obligation to process that proposed transfer because PSE had not notified AT&T that it was willing to accept all of Petitioners' obligations under the plans. Because no such notification was provided, the 15-day period on which Petitioners rely was never triggered.

18) This is also covered extensively within petitioners 9.12.16 comments. The Commission is aware there was no controversy in 1995 as to which obligations transfer. AT&T's position in 1995 was that under 2.1.8 the revenue and time commitments do not transfer and thus this was the basis of AT&T's sole defense of suspecting fraudulent use under section 2.2.4 of AT&T's

tariff not 2.1.8. If AT&T had an objection to which obligations were being transferred it was obligated to provide a written denial within 15-days and did not. Petitioners will cover infra additional tariff reasons why AT&T cannot “toll the 15 days” based upon its fraudulent use defense.

AT&T’s September 30, 2016 comments page 3:

Additionally, there are factual disputes regarding whether AT&T in fact objected to this proposed transaction within the 15-day period that further preclude issuance of a declaratory ruling.

19) In the CCI to PSE transfer AT&T lied to the DC Circuit that it denied that transfer on Jan 27<sup>th</sup> 1995—because it knew it had to meet the 15 days; however, the facts are clear that there is zero evidence of such Jan 27<sup>th</sup> 1995 denial. The letter from AT&T counsel Meric Bloch with a different date only stated the CCI-PSE transfer was being held up due to security deposit requirements. Regarding the Inga to PSE transfer there are no disputed facts. AT&T’s relying upon the February 6<sup>th</sup> 1995 letter from Freddy Whitmer as its denial; however, that 2.6.95 letter is clearly not a denial. AT&T counsel Whitmer himself before Judge Politan in March 1995 never claimed his own letter was a denial—more details infra.

FCC 2003 Order: Page 3 footnote 18

*Combined Companies, Inc., etc. and Winback & Conserve Program, Inc., et al. v. AT&T Corp.*, Civil Action No. 95-908, Preliminary Injunction (filed May 19, 1995) (*First Preliminary Injunction*); *see generally First District Court Opinion*. The district court found that **section 2.1.8 of AT&T’s tariff, which governed the transfer of plans, was not conditioned upon the provision of a deposit** and that the Inga Companies had otherwise met the requirements of section 2.1.8. *See First District Court Opinion* at 20-21; **accord 47 C.F.R. § 61.54(j)(1994)(special rules affecting a particular item must be specifically referred to in connection with such item).**

The Commission noted that “47 C.F.R. § 61.54(j)(1994)” required that if AT&T conditioned the transfers based upon a different section of the tariff, the tariff section being relied upon must be specifically referred to in connection with such item. Since 2.1.8 or 3.3.1Q bullet 4 were not conditioned upon either (A) deposit requirements or (B) “Section 2.2.4 Fraudulent Use,”

AT&T could not rely upon any section outside 2.1.8 or 3.3.1Q bullet 4 to prohibit a 2.1.8 or a 3.3.1Q bullet 4 transfer. AT&T's sole defense in 1995 was 2.2.4 fraudulent use and the Commissions 2003 Order simply ruled that AT&T used an illegal remedy of permanently denying instead of temporarily suspending service.

FCC 2003 Order Pg.10 para 13

“Because AT&T did not act in accordance with the **“fraudulent use”** provisions of its tariff, which did not explicitly restrict the movement of end-user locations from one tariff plan to another, AT&T cannot rely on them as authority for its refusal to move the traffic from CCI to PSE. AT&T does not rely upon **“any other provisions of its tariff”** to justify its conduct.”

FCC July 2, 2004 Brief to DC Circuit pg. 13-14:

“The Commission also reasonably concluded that, **even if** the requested movement of traffic between CCI and PSE would violate the "fraudulent use" provisions of AT&T's tariff (**a question the agency found it unnecessary to decide**), AT&T's refusal to move traffic from CCI to PSE was not authorized under the tariff's "temporary suspen[sion of] service" remedy upon which AT&T relied below. That ruling was more than justified, particularly given the requirement of 47 CFR 61.2 that tariff provisions be **"clear and explicit"** and this Court's holding that the FCC may decline to enforce tariff provisions against customers for failure to comply with that provision, Global NAPS, Inc 247 F.3d at 258.”

The Commission ruled against AT&T due to the permanent denial illegal remedy and said it therefore was unnecessary to decide anything further regarding AT&T's sole defense of fraudulent use. However, if the FCC ever had to decide if a 2.1.8 or a 3.3.1.Q bullet 4 transfer could be prohibited by fraudulent use, the Commission to be consistent and follow the law, would additionally deny it as per: (A) 47 CFR 61.2 that tariff provisions be **"clear and explicit"** and (B) 47 C.F.R. § 61.54(j)(1994)(special rules affecting a particular item **must be specifically referred to** in connection with such item).

Because 2.2.4 fraudulent use was not explicit in stating it can be used to prohibit a 2.1.8 or a 3.1.Q bullet 4 transfer and because 2.1.8 did not explicitly refer to 2.2.4 fraudulent use, this further defeats AT&T's sole defense of fraudulent use. The Commission having already

determined in 2003 that AT&T could not rely upon its security deposits section to prohibit a 2.1.8 transaction; **would have to be consistent** and determine that AT&T also could not rely upon 2.2.4 fraudulent use to prohibit a 2.1.8 transaction -----nor could AT&T toll the 15 days' denial requirement under 2.1.8 (c) based upon any other tariff section---and this also goes for 3.3.1.Q bullet 4. This doesn't even take into account that --as Judge Politan determined there was no merit to suspect fraudulent use in the first place. Judge Politan's non vacated May 1995 decision and his March 1996 injunction determined petitioners CSPTII/RVPP plans were pre June 17, 1994 immune from shortfall and termination charges as they could be discontinued/restructured/upgraded.

20) Section 2.1.8 (c) that required AT&T to provide a written denial within 15 days or it must process the order was (A) Not Explicit and (B) did not refer to any other AT&T tariff sections which would enable toll the 15 days. Therefore *even if* AT&T counsel Freddy Whitmers' fraudulent use warning letter of 2.6.95 was actually considered a proper 15 day written denial—and it wasn't—section 2.1.8 (c) does not specifically refer to 2.2.4 fraudulent use to comply with 47 C.F.R. § 61.54(j)(1994)(special rules affecting a particular item must be specifically referred to in connection with such item).

21) There are no disputed facts in the Inga to PSE traffic only transfer. In the Inga to PSE transfer AT&T's September 1, 2016 comments first **flagrantly lied** to the Commission that its counsel Freddy Whitmers' February 6, 1995 letter --that recognized the **Inga to PSE** transfer, was an argument that PSE had to assume revenue commitments. Then AT&T counsel **flagrantly lied** that it was an actual **written denial** of that Inga-PSE transaction! There are no disputed facts the 2.6.95 AT&T counsel Whitmer letter was a fraudulent use **WARNING** letter—it was not a denial of anything! The Inga to PSE traffic only transfer:

(A) was properly ordered

(B) recognized by AT&T

(C) occurred 4 months prior to the May 1995 ordered plan transfer and Judge Politan stated it was also included in the facts of the complaint

(D) was not denied within 15 days as per 2.1.8 (c)

and thus the Commission must decide AT&T violated its tariff by not processing the Inga to PSE traffic only transfer. AT&T counsel Fred Whitmer along with several other former AT&T counsel will probably be questioned by the NJ Office of Attorney Ethics in its cooperation with the FCC Ethics Staff, DC Circuit Court Ethics Staff and the DC Bar Counsel regarding Mr Whitmers' knowledge of whether his 1995 co-counsel Mr. Richard "self-evident" Brown III clearly understood in 1995 that revenue and time commitments do not transfer on a traffic only transfer. Petitioners have already submitted evidence that Mr. Brown claimed to the Third Circuit in 1996 that it was "self-evident" under the tariff that plan obligations don't transfer on traffic only transfers. AT&T counsel Fred Whitmers' 2.6.95 letter ---in which he in March 1995 before Judge Politan did not claim his letter was a denial---- and this latest AT&T counsel attempted fraud on the Commission is covered in depth in petitioners 9.12.16 comments page 72 para 156 through page 75 para 164.

22) AT&T's September 30, 2016 comments page 3:

As to Request V, by seeking and obtaining the May 1995 injunction, Petitioners likewise waived any claim that they were entitled to delete locations under their CSTP II Plans, and then to have PSE add those locations to its plan in separate transactions. In addition, there are clear factual disputes as to whether Petitioners ever sought such an alternative transfer, which also preclude issuance of a declaratory ruling.

Petitioners obviously never waived claims upon the May 1995 plan transfer ordered by Judge Politan. Petitioners made attempts to transfer the traffic after the May 1995 Order of Judge Politan as AT&T counsel Charles Fash in July 1997 would not allow it claiming fraudulent use. In fact, **in 1996 petitioners specifically requested this declaratory ruling request to the FCC!** So how does AT&T assert that petitioners waived its right to also transfer accounts without the plan under 3.3.1.Q bullet 4 delete and add account movement method? Obviously petitioners continued to assert *after* May 1995 that any tariff section that either expressly allowed or did not prohibit account movement was within its claims and the **FCC recognized this in its 2003 Order.** The evidence submitted showed Judge Politan statement ---"apart from 2.1.8" ---did not care which tariff section was used! AT&T counsel Friedman never raised any defense to the Commission in 1996 that petitioners could not seek its 3.3.1.Q bullet 4 declaratory ruling based

upon the May 1995 plan transfer. AT&T now in 2016----21 years later is making this absurd argument for the first time!

23) AT&T is *now* claiming there “are clear factual disputes as to whether Petitioners ever sought such an alternative transfer.” The evidence is conclusive! Petitioners exhibited the July 7<sup>th</sup> 1995 letter from AT&T’s counsel Charles Fash to the Inga Companies counsel Charles Helein stating AT&T did allow account movement using “3.3.1.Q bullet 4 delete and add,”<sup>3</sup> however, AT&T was asserting 2.2.4 fraudulent use due to the percentage of revenue being moved.<sup>4</sup>

24) Petitioners did try to move accounts via delete and add and its processing manager Nancy Williams advised petitioners that AT&T legal said to deny all attempts to move accounts to the deeper discount plans 66%. Furthermore, the Charles Fash letter is in July 1995 is *after* the May 1995 Judge Politan decision transferring the plans. Obviously petitioners were still seeking alternative ways to move the accounts without transferring its golden goose---grandfathered pre June 17, 1994 plans. Thus AT&T’s 2016 created argument that Petitioners gave up any alternative account movement method after the May 1995 Judge Politan Decision is false.

Petitioners have detailed this issue in much greater detail in its September 12, 2016 comments exhibiting its counsels’ Charles Fash letter but yet AT&T again boldly lies by stating petitioners

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<sup>3</sup> AT&T counsel Charles Fash July 7<sup>th</sup> 1995

“The **proper way** to move traffic (i.e. a subset of locations on a plan) between plans is to submit service orders to **delete the locations from one plan and add the locations to another.**”

<sup>4</sup> AT&T counsel Charles Fash July 7<sup>th</sup> 1995:

“The specific action requested by your client even if **the proper mechanism** been employed, would therefore appear to AT&T to be nothing more, nothing less, than a fraudulent transfer of assets designed to defeat collection by AT&T of its lawfully tariffed charges. **Section 2.2.4** A.2 of AT&T’s Tariff F. C. C. No 2 prohibits the use of service “with the intent to avoid the payment, either in whole or in part, of any of the Company’s tariffed charged by ....[u]sing fraudulent means or devices, tricks [or] schemes.....”

never “sought such an alternative transfer!” How can current AT&T counsel intentionally lie to this Commission when its own counsels letter in July 1995 is explicitly stating AT&T is not processing petitioner’s transfers under the so called “proper mechanism” of delete and add 3.3.1.Q bullet 4--- due to 2.2.4 fraudulent use? See petitioner’s 9.12.16 comments covering this AT&T counsel’s attempted fraud on the Commission starting from page 80 para 179. More on this infra.

25) AT&T’s September 30, 2016 comments page 4:

As to Request VI, the issue of whether AT&T **allegedly** “shut-down all traffic only transfers” in June 1995 has **nothing to do with whether, pursuant to the terms of Section 2.1.8, a CSTP II plan holder could transfer substantially all of its traffic** without the transferee agreeing to assume all of the transferor’s obligations relating to that traffic. Moreover, the question of whether AT&T in fact “shut-down” such transfers in mid-1995 raises fact issues that make this issue inappropriate for resolution by declaratory ruling.

Can you believe AT&T is actually stating that totally shutting down 2.1.8 has NOTHING TO DO WITH which obligations transfer under a traffic only transfer! Moreover, you have to actually laugh when AT&T states it **“allegedly”** shut down section 2.1.8 to all traffic only transfers. The evidence is explicit –Both AT&T’s order processing manager Joyce Suek in June 1995 and AT&T’s counsel Charles Fash in July 1995, in writing, confirmed that 2.1.8 was not being allowed to accept any traffic only transfers. It did not make a difference as to which obligations were to be transferred nor a difference as to the percentage of revenue being transferred under 2.1.8 ---AT&T simply used an illegal remedy by totally shutting down section 2.1.8 to all traffic only transfers. The evidence in writing from AT&T’s own order processing manger Joyce Suek 2.1.8 **“no longer”** processes partial TSA’s” ---which of course AT&T used to process traffic only transfers but used an illegal remedy to totally stop all traffic only transfers. AT&T’s counsel Mr. Charles Fash explicitly advised petitioners that the Transfer of Service provision does not address the transfer of traffic. Yes, section 2.1.8 was totally shut down—verified but multiple sources including AT&T’s own counsel! There was zero opportunity for petitioners to transfer less traffic to satisfy AT&T’s bogus fraudulent use defense. Petitioners asked its AT&T account representative –OK how much is too much traffic transferred

considering the plans are pre June 17, 1994 immune? AT&T simply said it is shut down! There are no disputed facts.<sup>5</sup>

26) There was simply no way in the world AT&T counsel was going to allow petitioners locations to be discounted by 66%! AT&T was willing to engage the illegal remedy by totally shutting down 2.1.8 under any conditions to prevent locations moving to 66%. If the \$54.6 million traffic was moved to PSE's CT-516 discount plan at 66% instead of CSTPII/RVPP 28%, AT&T would have paid an additional 38% on \$54.6 million in traffic! It would cost AT&T **\$20,748,000** additionally per year. When AT&T tells you it's about tariff compliance ---not about the money---**you know it's about the money!** Obviously petitioners were not the only reseller AT&T was violating its tariff with as that is why the FCC *October 1995 Order* states:

134. Finally, we note that AT&T has voluntarily committed to implement certain measures that are **designed to address criticisms of its business practices that resellers have raised in this proceeding and elsewhere.**

It was no secret that AT&T intentionally violated its tariff to put resellers out of business. See petitioners 9.12.16 comments on page 88 para 197 that further comments on this declaratory ruling.

AT&T's September 30, 2016 comments page 4:

Finally, in assessing whether to even rule on the noticed declaratory ruling requests, the Commission should take into account the following considerations. *First*, the New Jersey District Court, which referred the matter to the Commission and ultimately has responsibility for resolving Petitioners' claims, has not asked for the Commission's assistance as to these matters.

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<sup>5</sup>AT&T order processing manger Joyce Suek:

Al --Per our Conversation, 6/19; an original TSA is now required for transfer activity.

Additionally, we **"no longer"** process partial TSA's, the TSA must be for the whole plan.

AT&T counsel Charles Fash:

"I will address the "partial TSA" issue first in general and then with your clients express and announced intentions. The Transfer of Service provision of the tariff addresses the issue of transfer of service, **not transfer of traffic by moving individual locations from one plan to another.**

27) Judge Politan did not refer issues surrounding the penalty infliction in June 1996 as his Courts second decision was March 1996. However, his Court understood the plans were pre June 17<sup>th</sup> 1994 grandfathered and thus decided AT&T's sole defense of fraudulent use of suspecting shortfall on the non-transferred plans revenue commitment was not properly substantiated.<sup>6</sup> The June 1996 penalty infliction was not referred by Judge Politan as it occurred in June 1996 and the second Judge Politan Decision was March 1996. However Judge Politan understood the plans were pre June 17, 1994 grandfathered and would have ruled against AT&T for inflicting shortfall and termination charges as the plans were timely and properly restructured.

28) The second part of Judge Bassler's referral sentence asked to address **"as well as any other issues left open"** and all the declaratory rulings requests made by petitioners addresses open issues that will assist the court. Secondly, it is not necessary that a district court explicitly refer a declaratory ruling as petitioners have the right to ask for a declaratory ruling request to resolve a controversy or uncertainty. Petitioners have evidenced that during the DC Circuit Oral Argument that FCC Counsel Bourne and DC Circuit Court Judge Ginsburg believed that whether the plans were pre June 17<sup>th</sup> 1994 grandfathered was an important issue that should have been resolved.

D.C. Oral Argument Judge Ginsburg understood CCI keeps its customer plan obligations but understood the plans were 6.17.94 penalty immune and completed the FCC's counsels' question (Pg.

27 Line 2)

MR. BOURNE: Well, **CCI still had the obligation to pay its shortfall charges**, and there's, there are **other aspects to this** that the **Commission didn't rule on**. I mean, for instance --

JUDGE GINSBURG: Whether they were **grandfathered?**

MR. BOURNE: **Right**. So it could well be that there were little or **no shortfall charges**.

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<sup>6</sup> Judge Politan March 1996 Page 16 para 1:

**The Court finds nothing in the Tariff F.C.C. No. 2 which prevents fractionalization**, and contemplates a like finding by the F.C.C. Clearly, therefore, plaintiffs have established a strong likelihood of success on the merits.

29) So even though Judge Politan clearly determined AT&T's fraudulent use defense was bogus because the plans were pre June 17, 1994 exempted ----obviously the duration of the June 17, 1994 immunity was an issue that the FCC Counsel Bourne and DC Circuit Court Judge Ginsburg believed should have been interpreted by the Commission. How does AT&T possibly assert fraudulent use when AT&T knew in Jan 1995 that there should be no shortfalls or terminations charges inflicted! Under the Administrative Procedures Act the Commission has broad discretion to assist the District Court. It also appears the DC Circuit Court needed some assistance as well. It has become abundantly clear that Judges Bassler and Wigenton want the Commission to interpret every possible controversy and uncertainty known to mankind.

AT&T's September 30, 2016 comments page 4:

*Second*, this proceeding has been pending a very long time and the District Court has expressed a clear interest in obtaining the Commission's views as to the **one matter** that it did refer, i.e., the **interpretation of Section 2.1.8**. Accordingly, the Commission should focus its efforts on resolving that issue and not, after 10 years, reverse course and expand the scope of the proceeding.

30) The fact is the Commission did address Judge Bassler's 2006 referral on which obligations transfer under 2.1.8 within the FCC's *January 12, 2007 Order*. The Commission ruled that the Judge Bassler referral on 2.1.8 "did not expand the scope" of the Third Circuit controversy on whether AT&T's sole defense of fraudulent use under 2.2.4 could be used to prevent a proper 2.1.8 transfer. The Commission's *Jan 12<sup>th</sup> 2007 Order* accepted the DC Circuit's decision that 2.1.8 also allowed traffic only transfers. So not only can traffic only be moved under 2.1.8 but under 3.3.1.Q bullet 4 as well. The DC Circuit's comments on movement of locations under 3.3.1.Q bullet 4 never took into consideration that 3.3.1.Q bullet 4 was not conditioned by 2.2.4, nor did the DC Circuit understand the plans were pre June 17, 1994 shortfall and termination charge immune. So when the FCC goes to the DC Circuit the next time it will be able to address all these issues.

31) The FCC simply saw that based upon the recent Judge Wigenton decision in which AT&T grossly misrepresented the FCC's *January 2007 Order*, that Judge Wigenton needed further assistance to resolve open issues that the Administrative Procedures Act afforded the FCC. Additionally, substantial additional non disputed facts and tariff evidence were presented to the

Commission to make its decision a layup. It's time to address all issues because the FCC is holding up petitioners, the Florida Department of Revenue, the IRS, and the State Ethics investigations.

32) AT&T's September 30, 2016 comments page 4:

*Third*, the Commission should take note of what has happened since the September 12, 2016 reply date. Apparently emboldened by the Commission's willingness to solicit comments on their earlier requests for declaratory ruling, Petitioners have submitted more requests that are even less relevant to the matters at issue in the District Court litigation. In sum, the Commission should deny the *June 30 and July 11 Petitions* for declaratory rulings, and in no event, should it entertain any additional requests for declaratory ruling.

Petitioners latest declaratory ruling requests of 9.15.16 and 9.19.16 explicitly cover all controversies in this case and are absolutely relevant and present no disputed facts. Instead of AT&T commenting on the additional declaratory ruling requests of 9.15.16 and 9.19.16 AT&T simply advises the Commission to not pay attention to them. Why? Because these additional declaratory ruling requests of 9.15.16 and 9.19.16 can't be defended by AT&T! The Commission was witnessed Judge Wigenton **did not even address the January 2007 Order** that determined the Bassler referral on 2.1.8 was moot. The FCC now fully understands Judge Wigenton even advised petitioners to go to the DC Circuit Court and file a writ of mandamus to force the FCC to address a non-remanded moot issue of which obligations transfer under 2.1.8. Under the Administrative Procedures Act the Commission has broad discretion to resolve *all* controversies and uncertainties. The Commission also needs to issue public notice to seek comment on some or all of the additional declaratory ruling requests made 9.15.16 and 9.19.16. The Commission needs to address these additional 9.15.16 and 9.19.16 requests so when it needs to defend its decision to the DC Circuit Court it will be able to show the DC Circuit the extent of the violations AT&T engaged in to put petitioners out of business. If there are 5 violations regarding

either the original 2.2.4 controversy or the June 1996 penalty infliction the Commission should find violations on all issues and not just depend on 1 violation per controversy. The DC Circuit and NJFDC need to understand the extent of AT&T's violations as it will aid in petitioner's ethics complaint and the damages phase.

33) AT&T's September 30, 2016 comments page 6:

**III. PETITIONERS' FILING** As noted above, Petitioner's reply comments are 112 pages in length and address a number of issues that **are irrelevant** to the resolution of the seven declaratory ruling requests that the Commission has noticed for comment. Consequently, AT&T **does not in this submission attempt to respond** to each and every argument made by Petitioners

Interesting how **AT&T has decided** what was **relevant** when the Commission sought answers on all declaratory rulings filed in June and July 2016. The fact is petitioners raised **only issues that were relevant** to the declaratory ruling requests. AT&T doesn't detail what non disputed facts raised by petitioners were not relevant.

34) This is simply "AT&T speak" for we can't defend ourselves so let's just scam the FCC and claim petitioner's comments were too long and just blanket it by saying it's **not relevant**. Does the Commission really believe that if AT&T's counsel actually had a defense it would not take the time to respond? Is AT&T counsel serious? AT&T is paying AT&T counsel by the hour so what is AT&T counsels concern? It makes absolutely no sense. AT&T simply could not come up with a defense.

35) AT&T's September 30, 2016 comments page 6:

**A. Declaratory Ruling Request I.**

Did AT&T violate the FCC's Oct 23<sup>rd</sup> 1995 Order by not allowing its customers to maintain for [a] minimum of 3 years its pre June 17<sup>th</sup> 1994 terms and conditions by not allowing petitioners to use the discontinuation without liability provision under Tariff No. 2., on its 3 years CSTPII/RVPP (EBO) plan commitment?

AT&T's September 30, 2016 comments page 6:

In its initial comments, AT&T pointed out that this issue was not appropriate for resolution through a declaratory ruling proceeding because Petitioners **had not presented any evidence that they had sought to use the discontinuance without liability option** during the period 1995 to 1997, nor had they stated when or how AT&T had refused to permit them to take such steps. AT&T Comments at 21.

36) More nonsense. Petitioners pointed out that it did restructures during 1995 through 1997. The FCC October 17<sup>th</sup> 2003 Order on page 2 noted there were initially **2** plans involved in the traffic only transfer.<sup>7</sup> Petitioners pointed out that by the time of the CCI/AT&T settlement agreement in July 1997 there were only **5** plans left. The plans did not magically disappear.

AT&T- CCI Settlement Agreement of July 1997 page 1

WHEREAS, CUSTOMER subscribes to certain telecommunications services (the "Services") pursuant to AT&T F.C.C. Tariff No. 2 ("Tariff 2"), under CSTP II Plan numbers 2430, 2829, 3124, 3524, and 3663 ("the Plans");

37) The evidence is conclusive that petitioners did combined, restructured and upgraded the remaining revenue commitment after the January 1995 traffic transfer eliminating 4 plans. The issue in 1996 was not whether petitioners timely restructured its plans. Obviously the plans were timely restructured or had met fiscal year revenue commitments. The only controversy and uncertainty leading up to the June 1996 penalty infliction was AT&T's interpretation of the terms and conditions of the June 17, 1994 exemption within the Discontinuation without liability tariff section. AT&T's position then -----as it is now -----is that it did not make a difference if the plans were 3 year commitments—as soon as 1 post June 17, 1994 restructure was done AT&T interpreted the restructured plans as being post June 17, 1994 ordered. The FCC is well aware that it never allowed AT&T to change its tariffs at start of a long term contract. This was a strong

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<sup>7</sup> FCC *October 2003 Order* pg. 2 para 2:

Prior to June 17, 1994, the Inga Companies completed and signed AT&T's "Network Services Commitment Form" for WATS under AT&T's Customer Specific Term Plan II (CSTP II), a tariffed plan, which offered volume discounts off AT&T's regular tariffed rates. The CSTP II was set forth in AT&T's Tariff FCC No. 2 (Tariff). The Inga Companies committed to aggregate \$54 million worth of 800 services per year under their **nine** CSTP II plans.

petitioner objection that was covered by the changes made in AT&T's tariff during the 1-year period covered by the FCC's *October 1995 Order*. AT&T clearly violated that *Order* by not filing a substantial cause pleading within 6 days to meet the substantial cause test. If AT&T had filed there would have been substantial petitions to suspend or reject the tariff changes. Based upon feedback from the reseller community the Commission would have made AT&T's tariff change even more explicit that an AT&T customer could discontinue without liability for the full duration of the 3-year commitment and maintain its pre June 17<sup>th</sup> 1994 exemption. We will never know what the FCC would have done because AT&T violated the FCC *October 1995 Order* by not filing---because it was "concerned of total chaos" being inflicted upon the FCC in the one year following the *October 1995 Order*. AT&T stating there would be total chaos is a concession that there were objections it was aware from many resellers that AT&T was violating.

38) AT&T's September 30, 2016 comments page 6:

AT&T also explained that the Commission's *October 1995 Order* did not impose on AT&T an obligation to file with the Commission a substantial cause pleading whenever a customer objected to AT&T's interpretation of an existing tariff provision. To the contrary, as is clear from the language of the *October 1995 Order*, **the substantial cause requirement only came into play if AT&T sought to revise its existing tariff in the one year period following the October 1995 Order's effective date. *Id.* at 22-23.**

Yes, AT&T has conceded it violated FCC *October 1995 Order*. As per AT&T: **"the substantial cause requirement only came into play if AT&T sought to revise its existing tariff in the one-year period following the October 1995 Order's effective date."** Petitioners agree AT&T had to file a substantial cause pleading based upon tariff changes it made in the one-year period following the FCC's *October 1995 Order*.

39) Petitioners 9.12.16 comments provided tariff exhibits of the changes that **were indeed made during** the one-year period following the FCC *October 1995 Order*. The evidence explicitly shows that tariff changes were made to (A) Section 2.1.8 covering the 15 days' written denial and the security deposit against potential shortfall (B) Discontinuation Without Liability/June 17<sup>th</sup> 1994 immunity exemption, (C) Fraudulent Use section 2.2.4. All controversies were covered

by the FCC *October 1995 Order*. Given the fact that AT&T's own concession was that it was required to have **voluntarily** filed when there were tariff changes, mandates the Commission to determine AT&T cannot rely upon any defenses under any of the tariff sections changed.

40) See Petitioners 9.12.16 Comments on page 16 para 29 that includes all the tariff filings during the 1-year period:

AT&T was thus required to file a substantial cause pleading covering tariff filings from *October 1995 Order* for a year. The following tariff revisions were thus covered by the *October 1995 Order*. Here as **EXHIBIT B** is the November 1995 Tariff Revisions covered by the *October 1995 Order*. (Page 1 of **EXHIBIT B** is 2.5.18 Discontinuance Without Liability) Page 2 of **EXHIBIT B** is section 2.1.8) Page 3 of **EXHIBIT B** is the Expiration issue that relates to the June 17, 1994 immunity. Here as **EXHIBIT C** is the 1996 Changes covered by the FCC's *October 1995 Order*. Page 1 of **EXHIBIT C** is 2.2.4 Fraudulent Use. (Page 2 and 3 of **EXHIBIT C** is the May 1996 tariff revisions of section 2.1.8 and also covers 15 days' written denial clause covered under the *October 1995 Order*. Here as **EXHIBIT D** is 5 pages' of the August 1996 tariff revisions of Discontinuance Without Liability section covered by the *October 1995 Order*.

30) The November 1995 tariff revision covered the Discontinuation Without Liability Section which that section along with section 2.1.8 Transfer of Service were explicitly covered by the October 1996 FCC Order. See section 6:

**6. Expiration of AT&T's 800 Customer Specific Term Plan II - A CSTP II expires when the three-year term ends. Upon expiration of the Term Plan, the plan will roll-over to a new three-year plan at discount levels applied during the third year of the plan, if the Customer notifies AT&T to renew the term plan. If the Customer does not notify AT&T to renew the Term Plan, the Customer's service will revert to current (non-term) rates.**

41) If AT&T had filed there would have been many petitions to suspend or reject and this would have brought about explicit clarity to the terms and conditions. AT&T would not have been able to interpret its tariff in a self-serving manner. There would not have been often simultaneous interpretations that restructured plans were both new (to lose grandfathered status) and not new (so LSTP's and bonus monies could not be paid). The FCC has been provided the evidence of all the tariff changes during the one-year period in which there were obviously many objections and pending transactions. Under the FCC's *October 1995 Order*---as **AT&T has now conceded** --- AT&T was required to meet the substantial cause test—despite the chaos AT&T claims it was concerned about. All AT&T defenses must be precluded for intentionally violating the FCC *October 1995 Order*. AT&T's own concession of violating the FCC *October 1995 Order* means

the case is over and the damages phase can start and the ethics staffs, and taxing authorities can now proceed with their investigations.

42) AT&T's September 30, 2016 comments page 6:

In their reply comments, the Petitioners do not effectively **address or rebut** either of these two points.

Maybe the petitioners 9.12.16 comments were too long and AT&T just missed it, but the fact is petitioners 9.12.16 comments *did address and rebut*:

(1) that petitioners did timely restructure all plans between 1995 and 1997 and that is why the facts show the quantity of plans went from 9 plans to 5 plans. There never was any controversy that the plans were not timely restructured. The only controversy was simply AT&T's tariff interpretation that its customers were only allowed 1 post June 17, 1994 restructure and then at that point AT&T considered the plans to be post ordered June 17, 1994 plans—despite being pre June 17<sup>th</sup> 1994 grandfathered and at the beginning of a 3 years commitment. AT&T has made this sole argument to the FCC in its initial comments in 2006 and early 2007. There has never been any other controversy as to why AT&T hit the end-users with shortfall and termination charges. AT&T of course shows **no 1996 argument** that the plans were not timely restructured and of course the FCC *October 2003 Order* does not make any AT&T assertion that the plans were not timely restructured. The **2** plans were obviously combined/upgraded/restructured to **5** plans *on time* because **if they were not the plans would have been hit with charges in 1995 not June 1996!** Petitioners 9.12.16 comments detailed that a restructure was ordered so the 12<sup>th</sup> fiscal month of a plan was never entered into and another TERM ASSUMPTION STARTING DATE (TASD) became the 1<sup>st</sup> month of another 3-year period, instead of the 12<sup>th</sup> month of the previous 3-year commitment. According to AT&T when petitioners timely and effectively used its so called one free post June 17<sup>th</sup> 1994 restructure **during 1995**, AT&T did not allow another restructure **in 1996**—even though the petitioners were still under the terms and conditions of its 3-year commitment into 1997. Evidence already submitted shows AT&T's tariff states the plan and its terms and conditions are not over until the 3-year period ends---AND ---the customer has sole discretion to renew the terms and conditions for another 3 years' period. The controversy was simply a tariff interpretation issue of the June

17<sup>th</sup> 1994 immunity period—there weren't any fact based disputes. AT&T counsel is now in *desperation mode* trying to creating new defenses 20 years later but the case record speaks loud and clear. In any event, having failed to adhere to the FCC *October 1995 Order* AT&T is precluded from raising any defenses as per discontinuance without liability and it pre June 17<sup>th</sup> 1994 exemption.

and

(2) petitioners did provide tariff exhibits and also agree that AT&T under the FCC *October 1995 Order* AT&T was required to meet the substantial cause test for all tariff changes made during the year following that *Order* when there were AT&T reseller customer objections regarding these tariff sections. Petitioners also pointed out that the *October 1995 Order* was not dependent upon “an objection to specific transaction taking place within the 1-year period.” AT&T's 9.1.16 comments bogusly asserted that because the traffic only transfers of [CCI to PSE and Inga to PSE] took place prior to the FCC *October 1995 Order*-----that *Order* did not cover those objections. AT&T's 9.1.16 bogus argument was that the FCC *October 1995 Order* was dependent upon a “transaction taking place within the 1-year period” and thus the January 1995 traffic only transfers were not covered by the FCC *October 1995 Order*. Not only was this false but AT&T's own bogus “transaction date” argument defeats itself regarding the June 1996 penalty infliction! Obviously the June 1996 penalty infliction controversy, regarding the duration of immunity of the June 17<sup>th</sup> 1994 exemption, occurred directly smack in the middle of the 1-year period following the effective date of the FCC *October 1995 Order*!

42) Objections to AT&T's tariff interpretations still persisted during the 1-year post October 1995 period when tariff changes were made to each of the tariff sections involved in the controversies and uncertainties. The FCC *October 1995 Order* simply only required that there were customer objections and tariff changes made during the 1-year period. Obviously the 1-year period following the FCC *October 1995 Order* included objections to all these issues as Judge Politan's second decision was not until March 1996. After Judge Politan's March 1996 injunction all these objections were raised in arguments in briefs presented to the Third Circuit Court ---all during the relevant 1-year period! The bottom-line is that there are no disputed facts in the case as per the June 1996 penalty infliction and AT&T is precluded from raising any defenses in any event AT&T did not file as per the *October 1995 Order*.

43) AT&T's September 30, 2016 comments page 7:

Petitioners previously recognized that obvious meaning of this provision. In a **May 2006** letter brief to the District Court that discussed modifications of the language of AT&T's tariff, Petitioners stated that in the *October 1995 Order*, "AT&T agreed to grandfather existing customers when it introduced a change to its tariff," and that the *Order* "required AT&T to give notice of the proposed change to customers, who were then given a chance to object.

AT&T here is just taking advantage of what petitioner's knowledge was in **2006**. AT&T provides a quote from a **May 2006** petitioner letter in which petitioners quoted *October 1995 Order* where AT&T agreed to grandfather existing customers when it introduced a change to its tariff. It was not read and understood in by petitioners in May 2006 that the FCC *October 1995 Order* required that AT&T meet the substantial cause test **otherwise petitioners would have raised that issue with the NJFDC at that point.** New counsel told petitioners what that whole section meant. The *first time* the substantial cause test requirement was recognized and understood was within *this past year* when petitioners filed FCC comments. **See here as Exhibit B** an email dated **February 1<sup>st</sup> 2016** to AT&T's counsel Richard Brown and the FCC staff regarding additional facts discovered regarding the FCC *October 1995 Order*. There were more facts discovered after the 2.1.16 as well.

44) As the FCC is aware petitioners filed comments this past year 2016, stating that it now fully **read and understood** the relevant section of the FCC *October 1995 Order*. Petitioners found that it transcended the scope of that dominant carrier *Order* and mandated AT&T meet the substantial cause test. So what AT&T is doing here is taking a petitioner statement from **May 2006** ---when petitioners did not understand AT&T's substantial cause test requirement ---and saying that petitioners themselves in 2006 never said AT&T had to meet the substantial cause test! The discovery of the fact that AT&T had to voluntarily meet the substantial cause test did not occur until 2016 when new counsel pointed it out. Petitioners wish it had discovered the ramifications of the FCC *October 1995 Order* in 1995 not 2016! Don't let AT&T counsel mislead the Commission that it was petitioners position in 2006 that AT&T didn't need to meet the substantial cause test in 1995-1996. AT&T knew it had to meet the test and voluntarily committed to doing so—despite its concern for bringing total chaos upon the FCC. It was not

mandatory that petitioners direct AT&T to go meet the substantial cause test. All that was required under the FCC *October 1995 Order* was objections and tariff filings. There were objections and there were tariff filings covering all controversies and uncertainties during the 1-year period following the FCC *October 1995 Order*.

45) AT&T's September 30, 2016 comments page 8:

Finally, any claim that the entire reseller community was somehow unaware of the *October 1995 Order* or somehow overlooked the substantial cause requirement that Petitioners purport to derive from paragraph 134 is absurd. The proceeding leading up to the issuance of that Order was heavily litigated, the reseller community actively participated and the decision itself was highly publicized

AND:

AT&T's September 30, 2016 comments page 8 footnote 19:

Indeed, one of Petitioners' prior lawyers, Charles Helein, submitted comments on behalf of America's Carriers Telecommunications Association ("ACTA") at the time. *See Reply Comments of ACTA*, IB Docket No. 95-118, at 1, 5 (filed Sept. 6, 1995) (noting that ACTA opposes any changes in the nondominant classification of AT&T," which was "under consideration in another proceeding"), 5 (reply comments signed by ACTA General Counsel Charles H. Helein). *See also October 1995 Order* ¶¶ 18, 134 (describing ex parte letters of Telecommunications Resellers Association regarding AT&T's commitments in that proceeding); *id.* at App'x A (listing 42 commenters, including ACTA and Telecommunications Resellers Association).

46) AT&T is actually blaming petitioners for not knowing or understanding the *October 1995 Order*! AT&T is blaming petitioners former counsel Charles Helein for not recognizing the substantial cause test requirement when he was filing on behalf of a different client! Counsel Helein for a different client only stated: (noting that ACTA opposes any changes in the non-dominant classification of AT&T." Charles Helein was not commenting on AT&T needing to meet the substantial cause test!

47) AT&T's own Revenue At Risk Report submitted in this case shows petitioners were by far AT&T's largest AT&T reseller of toll free service. Why didn't AT&T let its largest reseller know? AT&T and petitioners were in the middle of a lawsuit in 1995-1996. AT&T simply did not want petitioners or Judge Politan to know about the FCC's *October 1995 Order*! AT&T also failed to disclose it during discovery in the 800 Services, Inc. vs AT&T case. AT&T's counsel Richard Brown stated that the Order was heavily litigated and he knew all about it in 1995—but he intentionally violated discovery in AT&T's case with 800 Services, Inc., and of course hid it from petitioners, Judge Politan and the Third Circuit!

47) It does not make a bit of difference that petitioners did not know or its counsel representing a different client did not understand it in 1995-1996. It was simply **mandatory that AT&T voluntarily** meet the substantial cause test without petitioners **forcing AT&T** to go to the Commission and cause total chaos because there were: 1) tariff filings in the 1-year period and 2) strong objections to AT&T's tariff interpretations covering all the controversies and uncertainties. As evidenced supra the Order required **voluntary** compliance as it transcended the scope of that non dominant carrier order. AT&T's condition for obtaining non dominant carrier status was to stop intentionally violating its tariffs and in particular referenced Transfer of Service and Discontinuation Without Liability as these sections were continually being violated by AT&T to put all the resellers out of business. In retrospect the *October 1995 Order* should have mandated that each AT&T customer on the AT&T's Revenue At Risk Report be sent certified letter making them aware of the 1 year post period requirements under the *October 1995 Order*.

48) AT&T was **trusted** with **voluntarily** adhering to that *Order* on its own volition and the Commission can now plainly see that AT&T was not worthy of having been afforded that voluntary trust. Can you imagine even during discovery where AT&T was legally obligated to disclose to 800 Services, Inc., such a material fact, Richard “self-evident” Brown refused to disclose that it was required to go to the FCC to address the 800 Services, Inc. pre June 17, 1994 immunity exemption under the FCC October 1995 Order! Furthermore, in 1995-1996 the counsel for 800 Services, Inc. ---Lawrence Coven ---was the same counsel used by petitioners. If

AT&T had disclosed the FCC *October 1995 Order* in the 800 Services, Inc. case vs AT&T---the Inga Companies would have found out about it also as it was the same counsel. AT&T's counsel in the 800 Services, Inc case in 1995 Richard "self-evident" Brown<sup>8</sup> violated AT&T's discovery mandate and intentionally hid knowledge of the FCC *October 1995 Order*---as Richard "self-evident" Brown asserts "everyone knew about the Order!" Bottom-line AT&T did not file to meet the substantial cause test and thus all defenses are precluded.

AT&T's September 30, 2016 comments page 8:

Consequently, any claim that the existence of this provision only recently came to light is groundless. *See* notes 13 and 18 *supra* (showing that 800 Services and Petitioners were aware of the *Order* at least as of 2007 and 2006, respectively).

49) Obviously the discovery of the substantial cause test requirement was **not** discovered by the Inga Companies and 800 Services, Inc. until **2016**—otherwise it would have obviously been raised in 2006. AT&T's ploy maybe to make discovery of the substantial cause test go back to 2007 so 800 Services, Inc. may have a statute of limitations issue to address it.

50) The Inga Companies email to the Commission shows it found out about this substantial cause test requirement 2.1.16 and then the Inga Companies advised 800 Services, Inc. The Inga companies advised 800 Services, Inc president Phil Okin that under the FCC *October 1995 Order* AT&T was required to meet the substantial cause test regarding June 17<sup>th</sup> 1994 (only 1 restructure controversy). 800 Services, Inc. plan got hit with charges in November 1995 ----the month ***after*** AT&T was already under the FCC *October 1995 Order*. So AT&T not failed to disclose the Order during "discovery" but intentionally ignored the FCC *October 1995 Order* in its case with 800 Services, Inc as well!

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<sup>8</sup> This is the same Richard Brown III who along with Joseph Guerra intentionally engaged in the "all obligations of the transferor" fraud on Judge Bassler in 2005-2006. Then attempted the fraud on the FCC in December 2006. The FCC January 12<sup>th</sup> 2007 Order correctly determined there had never been a controversy regarding which obligations transfer under 2.1.8. The FCC *January 2007 Order* correctly determined the 2006 Judge Bassler referral on obligation allocation that resulted from AT&T counsel's fraud "did not expand the scope of the original referral" by the Third Circuit, in which AT&T's sole defense was fraudulent use 2.2.4—not 2.1.8. The FCC *January 2007 Order* acknowledged AT&T pulled off the fraud on Judge Bassler which AT&T continued with Judge Wigenton.

AT&T's September 30, 2016 comments page 8:

**B. Declaratory Ruling Request II.**

AT&T under the CSTPII/RVPP Enhanced Billing Option billed petitioner's end-user locations were inflicted shortfall and termination charges on petitioner's end-user locations far in excess of the discounts each end-user location was receiving. Under AT&T's Tariff No 2 within section 3.3.1Q it states for billing purposes AT&T can only remove the discounts. Therefore, would exceeding the location discount constitute an illegal AT&T billing remedy and thus regardless whether the charges were permissible AT&T wouldn't be able to rely upon its charges?

51) AT&T's September 30, 2016 comments page 8-9:

In their reply comments, Petitioners do not deny—nor can they—that AT&T's tariff specifically provides, as Judge Politan expressly noted in his 2000 decision in the 800 Services case, that AT&T had the right to allocate and bill any shortfall and/or termination liability to Petitioners' customers. Instead, they try to add words to the provision, asserting without citation to the language of the tariff, that AT&T “first” had to bill the shortfall and/or termination changes to Petitioners, and could allocate charges to end-users only “after” doing so. Ptrs. Reply at 58-59 (emphases altered). But the applicable tariff language said no such thing.

**See next page 3.3.1.Q.  
AT&T 800 Customer Specific Term Plan II**

**Numbers have been added next to  
Bullets (-) for your convenience:**

## AT&T COMMUNICATIONS

## TARIFF F.C.C. NO. 2

Adm. Rates and Tariffs

12th Revised Page 61.17

Bridgewater, NJ 08807

Cancels 11th Revised Page 61.17

Issued: March 10, 1994

Effective: March 11, 1994

### 3.3.1.Q. AT&T 800 Customer Specific Term Plan II (continued)

1 - If the Customer terminates the CSTP II within the first year of the plan and concurrently establishes a new CSTP II of greater value, no additional one-time 1/2% credit will apply.

2- All other specific term plans and service discounts are excluded from the CSTP II with the exception of the \$.01 per minute access line discount. The AT&T 800 Service-Domestic \$.01 per minute access line discount is applied after the Term Plan discount but before the RVPP discount.

3 - The Customer must commit to an annual commitment for three years as shown in Sections 3.3.1.Q.1. and 3.3.1.Q.8., or two years as shown in Section 3.3.1.Q.7., or one year as shown in Section 3.3.1.Q.9, following.

4 - The Customer may add or delete an AT&T 800 Service or AT&T Custom 800

Service covered under the plan.

5 - In the event the Customer converts from another AT&T Term Plan to a CSTP II, there will be no decrease in the percent discount received by the Customer. \*

.\*

**6- The Customer will assume all financial responsibility for all designated accounts in the plan and will be liable for all charges incurred by each location under the plan.**

7 - The Customer must also provide to AT&T, for each location participating in the above mentioned plan, written authorization for including the locations in the plan, billing account number and/or billed name, type of service, and address to which the bill is to be sent.

8- In the event that a location is in default of payment, AT&T will seek payment from the Customer. If the Customer fails to make payment for the location in default, AT&T will: (1) reduce the discount by the amount of the billed charges not paid by that location, if any, and apportion the remaining discount, if any, to all locations not in default, and if payment is not fully collected by the above method, (2) terminate the RVPP/CSTP II for failure of the Customer to pay the defaulted payment.

9- In the event of termination of the Customer's RVPP and/or Term Plan, the Customer being terminated must notify the individual locations that the RVPP and/or Term Plan has been discontinued and the individual locations not in default of their location billing charges will be converted to monthly rates as individual customers unless they notify AT&T otherwise.

10 - **Shortfall and/or termination liability are the responsibility of the Customer.** Any penalty for shortfall and/or termination liability will be apportioned according to usage and billed to the individual locations designated by the Customer for inclusion under the plan. **For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.**

AT&T counsel Friedman in 2003 agreed with petitioners that the end-user's locations were **not** AT&T customers. AT&T counsel Friedman conceded the end-users were only petitioner's customers, not AT&T's and AT&T had no right to bill shortfall to a **non AT&T customer**. Reducing some or all of a discount from the end-user is **not charging the end-user for shortfall** ---it is in actuality taking the locations **apportioned discount away from the reseller**. That is why it is phrased: "For billing purposes, such penalties shall **reduce any discounts apportioned** to the individual locations under the plan."

52) AT&T is raising a red herring to distract from the illegal billing remedy. Any AT&T customer that reads the CSTPII definitions in which the customer (reseller) is financially obligated ---Bullet 6 and bullet 10 would believe that if there were a shortfall or termination penalty AT&T should first bill its customer the reseller. Under 3.3.1.Q. # 10 bullet point it would seem AT&T should have to **first** bill its customer the reseller as it is stated first.

**BULLET 6 - The Customer will assume all financial responsibility for all designated accounts in the plan and will be liable for all charges incurred by each location under the plan.**

**Bullet 10- Shortfall and/or termination liability are the responsibility of the Customer.** Any penalty for shortfall and/or termination liability will be apportioned according to usage and billed to the individual locations designated by the Customer for inclusion under the plan. **For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.**

53) Then if the AT&T reseller did not pay AT&T would apportion the charges to the locations under the plan. Although AT&T did not first bill the petitioners MAIN BILLED ACCOUNT it is not relevant as to this controversy. AT&T's argument is attempting to avoid the relevant aspect here which is inflicting the end-user locations with charges in excess of the discounts each location was receiving is the illegal remedy.

Bullet 10:

**For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.**

54) Whether AT&T should have *first* charged petitioners Main Billed Account is not relevant to the fact that AT&T exceeded the discounts when it was only allowed to reduce the resellers apportioned discounts to its customers –the end-user locations. The fact that Judge Politan in the 800 Services, Inc. case said AT&T had the right to allocate charges is not the same as Judge Politan stating AT&T had the remedy to violate its tariff by inflicting charges in excess of the discounts. If Judge Politan actually thought that AT&T could violate its tariff in that manner it is even more necessary, the FCC address this issue. The point of this provision is that these end-user locations were **NOT** AT&T customers and AT&T's only recourse was to reduce the location discounts that were apportioned by the reseller. The discount was in effect being taken away from AT&T's customer the reseller. AT&T is trying to attribute to Judge Politan a tariff interpretation that he never said. There is a huge difference between removing a \$13 discount and charging the \$66 location a \$4,000 bill! There is no dispute that AT&T's tariff gives AT&T the right to allocate its charges to the end-user locations but not in excess of the reseller apportioned discounts afforded each location by the AT&T customer. That is why bullet 10 is explicit:

For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.

AT&T's September 30, 2016 comments page 9:

Nor did it say that "AT&T can *only* reduce discounts."  
*Id.* at 57 (**emphasis altered**).

AT&T counsel has come up some absolutely comical interpretations throughout this case but that one literally make you shake your head and say ---Did they actually say that! After 21 years AT&T now introduces yet another gem in its creation of new defenses. AT&T must mistake the Commission for absolute fools. **Why in the world would the tariff introduce a sentence that LIMITED what AT&T can be done for billing purposes when according to AT&T there is no limit!!!** What is the purpose of the sentence! If the sentence did not limit what AT&T could do ---there would be **NO REASON TO HAVE THE SENTENCE!** LOOK...

If there was no billing limitation the tariff at bullet 10 would simply ONLY state what is **[bracketed in red]** below....

Bullet 10- Shortfall and/or termination liability are the responsibility of the Customer.

**[Any penalty for shortfall and/or termination liability will be apportioned according to usage and billed to the individual locations designated by the Customer for inclusion under the plan.]**

For billing purposes, such penalties shall reduce any discounts apportioned to the individual locations under the plan.

If only the red bracketed statement was there then AT&T's fanciful attempt to again scam the Commission would make sense! Advocacy for a client is one thing---intentionally introducing this brand new total **nonsensical** defense -----20 years after the June 1996 penalty infliction---- is another. It is absurd and **absolutely insulting** that AT&T counsel would actually believe that FCC counsel and DC Circuit Court would believe AT&T's nonsense.

55) AT&T's September 30, 2016 comments page 9:

Petitioners scoff at the idea that this provision could serve the legitimate purpose of **inducing** resellers like Petitioners to comply with their obligations. Ptrs. Reply at 60-63. But Petitioners do not deny that the tariff provision had that effect.

The tariff had enough inducement not to lose all the discounts and be effectively be put out of business; without AT&T's illegal remedy inducement of ruining the relationship with petitioner's customers (the end-user locations). The word "inducement" means petitioners would know beforehand what AT&T's actions would be. No AT&T customer reading the terms and conditions of bullet 10 would ever believe that AT&T could do anything other than reduce the discounts, as these end-users were not AT&T's customers.

As the Commission is aware if AT&T's tariff is not explicit, then by law it must be construed against AT&T:

**FCC 2003 pg 7 footnote 48**

**Ambiguities in a tariff are to be resolved against the carrier and favorably to customers.** *The Associated Press Request for Declaratory Ruling*, File TS-11-74, Memorandum Opinion and Order, 72 FCC 2d 760, 764-65, para. 11 (1979) (citing *Commodity News Services, Inc. v. Western Union*, 29 FCC 1208, 1213, para. 3, *aff'd*, 29 FCC 1205 (1960)).

**AND FCC 2003 pg.10 fn 65**

Pursuant to Rule 61.2, titled “**Clear and explicit explanatory statements**,” as in effect in January 1995, “[i]n order to remove all doubt as to their proper application, all tariff publications must contain clean [sic] and **explicit explanatory statements** regarding the rates **and regulations.**” 47 C.F.R. § 61.2 (1994). It is a well settled rule of tariff interpretation that “[t]ariffs are to be interpreted according to the reasonable construction of their language; neither the intent of the framers nor the practice of the carrier controls, for the user cannot be charged with knowledge of such intent or with the carrier’s canon of construction.”  
Associated Press Request for a Declaratory Ruling, 72 FCC 2d at 764-65, para. 11 (quoting *Commodity News Services, Inc. v. Western Union*, 29 FCC at 1213, para. 2).

Petitioners 9.12. 16 comments at Page 52 para 110 cover this declaratory ruling in depth.

56) AT&T's September 30, 2016 comments page 10:

**C. Declaratory Ruling Request III.**

For plans that were ordered prior to June 17<sup>th</sup> 1994 and requested under the discontinuation without liability provision, interpret the duration of the immunity period from being charged pro rata shortfall and termination charges on a CSTPII/RVPP (EBO) plan commitment of 3 years?

AT&T's September 30, 2016 comments page 10:

As AT&T explained in its September 1 Comments, this request is based on a mistaken premise. Contrary to Petitioners' assertion, CSTP II plans (even pre-June 1994 CSTP plans) were not immune from the imposition of shortfall and termination charges.

57) As petitioners have explained there is no dispute or mistaken premise that even plans that were pre June 17, 1994 exempt would still have to meet shortfall and termination charges if the commitments were not met by the plans fiscal year end. This declaratory ruling simply seeks a tariff interpretation based upon use of the June 17, 1994 exemption. It is understood that an AT&T customer would have to take advantage of the exemption and simply submit the Network Services Commitment Form and discontinue its plan and start another 3-year commitment. The Commission is simply being requested to resolve a tariff interpretation controversy. As the Commission is aware AT&T's interpretation of the terms and conditions in 1995 through today is that a pre June 17, 1994 plan that is in the middle of a 3-years commitment, is only able to restructure 1 time after June 17<sup>th</sup> 1994 and then becomes a post June 17<sup>th</sup> 1994 plan on the next restructure.<sup>9</sup>

58) Petitioners do not agree with AT&T's tariff interpretation because AT&T's tariff interpretation did not take into consideration that the terms and conditions covered the entire 3-years commitment. When an AT&T customer commits to a 3-years contract it expects that it will be under the terms and conditions for the length of the 3-year commitment. It does not matter how many times a restructure is done within the 3-year commitment.

**6. Expiration of AT&T's 800 Customer Specific Term Plan II - A CSTP II expires when the three-year term ends. Upon expiration of the Term Plan, the plan will roll-over to a new three-year plan at discount levels applied during the third year of the plan, if the Customer notifies AT&T to renew the term plan. If the Customer does not notify AT&T to renew the Term Plan, the Customer's service will revert to current (non-term) rates.**

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<sup>9</sup> The difference between a pre June 17<sup>th</sup> 1994 plan and a post June 17<sup>th</sup> 1994 plan is that a post plan needed to meet monthly prorata revenue commitments when the plans were restructured. A pre June 17<sup>th</sup> 1994 plan did not have monthly pro rata commitments when restructured. The pre June 17<sup>th</sup> 1994 plans only had fiscal year end commitments.

59) It is petitioner's interpretation that not only were the plans grandfathered for the entire 3 years; but it was the petitioner's sole discretion if it desired to renew the commitment under the existing terms and conditions for another 3-years period and not take new plan bonus money incentives to lose pre June 17<sup>th</sup> 1994 grandfathered status. Petitioners have also provided tariff evidence that even when the CSTPII/RVPPP service was being phased out for Contract Tariffs, the AT&T customer could for 1 additional 3 years' period maintain those pre June 17, 1994 terms and conditions. Whether petitioner's plans could again maintain its pre June 17<sup>th</sup> 1994 terms and conditions for a second 3 years may not be relevant to the FCC **as AT&T did not even allow the first 3-year period to 1997.** Where it may assist the District Court for a full duration interpretation is in **assessment of damages.** How long could petitioners continue to restructure its CSTPII/RVPP EBO plans after June of 1996 penalty infliction without needing to meet pro rata commitments. **There are no disputed facts here.** The duration of immunity: "how many times can an AT&T CSTPII/RVPP EBO customer restructure its revenue and time commitments without needing to meet monthly prorata revenue commitments on a 3 years' commitment?" No disputed facts. The Commission is simply being requested to interpret the tariff.

60) Just as Judge Politan assumed that petitioners understood how to take advantage of the June 17<sup>th</sup> 1994 exemption the Commission must do the same: An AT&T customer that has plans that are ordered prior to June 17<sup>th</sup> 1994 has the ability under the tariff to restructure its commitment without needing to meet monthly prorata commitments for the entire 3 years of the commitment -----no matter how many times during the 3 year period the AT&T customer takes advantage of the terms and conditions----- Furthermore that AT&T customer has the ability to renew the terms and conditions for another 3 year period upon notification to AT&T and the pre June 17<sup>th</sup> 1994 terms and conditions continued to extend for 3 years under a Contract tariff offering once the CSTPII RVPP/ EBO product was phased out by AT&T. That did not occur until Jan 2001 and by that time all revenue commitment would have been virtually ameliorated.

61) The reason for primary jurisdiction is to have tariff interpretations being done by the FCC so there is not an issue of conflicting decisions from different District Courts making tariff interpretations. The FCC needs to decide this and the DC Circuit Court wants the FCC to decide the immunity duration and the NJFDC would want it to assess the duration of damages.

62) AT&T's September 30, 2016 comments page 10:

In their reply comments, Petitioners concede that “all plans both pre and post June 17, 1994...are subject to shortfall and termination charges.” Ptrs. Reply at 63. They nevertheless try to downplay the significance of that admission by arguing that **such charges could be avoided**. However, the fact that such obligations could be avoided if certain requirements were met does not mean that those obligations **did not exist or that the plans were immune from liability**. To the contrary, the CSTP II plan's shortfall and termination obligations were real, as PSE—the reseller to which Petitioners proposed to transfer their traffic—learned

63) AT&T is simply trying to create disputed facts when none exist. Obviously the pre June 17<sup>th</sup> 1994 plans had revenue commitments and petitioners understood its plans were immune only if petitioners simply submitted the AT&T Network Services Commitment Form to AT&T in a timely fashion and indicated it was Discontinuing without liability (aka restructuring). AT&T's Network Services Commitment Form provided the check box “Upgrade” as opposed to placing a check in the box next to the word: “New.” The fact is petitioners always made sure it restructured on time. AT&T cites PSE whose executive Pat Bello forgot to restructure its CSTPII/RVPP plan. The fact that some other company forgot to restructure its CSTPII/RVPP does not create a disputed fact in the Inga Companies case as petitioners never forgot to restructure. AT&T counsel has become so desperate that it is now presenting total nonsense that FCC can't interpret the duration of the immunity because some other company did not restructure its plan on time!

64) When Judge Politan in 1995 understood that petitioner's plans were pre June 17<sup>th</sup> 1994 grandfathered he assumed that petitioners would submit the forms on time and petitioners in fact did otherwise petitioners would have had charges inflicted in 1995!

**A)** Judge Politan: “Commitments and shortfalls are little more than **illusionary concepts** in the reseller industry—concepts which constantly undergo renegotiation and restructuring. The only “tangible” concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that **AT&T's demand for fifteen million dollars' security is premised on the danger of shortfalls**, the Court

finds that threat neither pivotal to the instant injunction **nor properly substantiated by AT&T.** March 1996 District Court Decision pg 19 para 1

**B)** Judge Politan: “Suffice it to say that, with regard to **pre-June, 1994 plans**, methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T’s own tariff.” **May 1995 Decision pg. 11**

**C)** Judge Politan: “In answer to the court’s questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can and do **escape termination and also shortfall charges** through renegotiating their plans with AT&T.” **May 1995 Decision pg. 24**

AT&T’s September 30, 2016 comments page 10:

There is also no merit to Petitioners’ claims as to the significance of Judge Politan’s comments in his March 1996 decision. Ptrs. Reply at 64 n.13. **That decision was rendered in the context of a preliminary injunction proceeding and, as a consequence, is not legally binding.** See *Wybrough & Loser, Inc. v. Pelmor Labs., Inc.*, 376 F.2d. 543, 548 (3d Cir. 1967) (“[T]he district court’s findings in preliminary injunction cases are tentative and inconclusive, and, at best, are nothing more than a tentative judgment of the litigation”). Moreover, the Third Circuit reversed Judge Politan’s order granting the preliminary injunction and criticized the district court’s decision to express a view on the merits as being inconsistent with its earlier decision that there should be a primary jurisdiction referral. In addition, Petitioners’ claim that Judge Politan definitively determined that shortfall liabilities are “illusory” is flatly contradicted by Judge Politan’s final decision in the 800 Services case, where he awarded shortfall to AT&T

65) First of all, Judge Politan’s statements regarding pre June 17<sup>th</sup> 1994 immunity were not ONLY “rendered in the context of a preliminary injunction proceeding” in March 1996. **Two of the three quotes** supra (B & C) are from Judge Politan’s **May 1995 non vacated Decision**.

AT&T’s statement is that Judge Politan’s determination that plans were shortfall and termination immune was not only “rendered in the context of a preliminary injunction proceeding.” The determination came within the **non-vacated** May 1995 Decision **as well as** within the vacated March 1996 injunction. Thus AT&T would have to agree Judge Politan’s determination in 1995 was not tentative and was not inconclusive---but conclusive and thus is the law of the case.

66) Secondly, the difference in the 800 Services, Inc. case is AT&T told 800 Services Inc., president Phil Okin that AT&T would not allow 800 Services, Inc. to restructure without liability—even though 800 Services was a pre June 17<sup>th</sup> 1994 issued plan and 800 Services did **not** restructure. Based upon AT&T's lie 800 Services Inc., **DIDN'T** restructure whereas CCI and Inga petitioners **DID** restructure! Judge Politan awarded shortfall to AT&T because 800 Services, Inc. did not restructure! Judge Politan clearly understood that when a pre June 17<sup>th</sup> 1994 plans were timely restructured there would no charges.

66) AT&T's comments only further make the argument that the FCC needs to address the issue; as we have AT&T quoting Judge Politan in the 800 Services, Inc. case ----and denouncing his March 1996 injunction determinations---but not taking into account the May 1995 non vacated Decision and then applying Judge Politan's 800 Services, Inc. statements to a completely different set of facts where 800 Services, Inc did not restructure and the Inga Companies did timely restructure! AT&T counsels are intentionally scamming the Commission!

AT&T's September 30, 2016 comments page 11:

Similarly, while Petitioners claim that they “actually did timely restructure [their] pre June 1994 plans in 1996,” Ptrs. Reply at 66, they present no evidence showing that in 1996 either CCI or Petitioners restructured the CSTP II plans at issue. Instead, Petitioners simply point to the fact that the Plans were still in existence in 1997. *Id.* **However, the fact that the Plans survived does not mean that shortfall liability was successfully avoided for earlier periods.** Indeed, the fact that in 1996 AT&T assessed shortfall charges against these accounts indicates that the opposite is true and, at a very minimum, demonstrates that fact issues exist which make issuance of a declaratory ruling inappropriate.

67) If the plans were not restructured it would mean the plans commitment was simply met. It certainly did not mean as AT&T “speculates” that tens of millions of dollars in shortfall actually resulted but petitioners “cut a check” to AT&T to have the plans “survive!” Just another moronic attempt to create disputed fact issues when none exist. There has never been a controversy about not timely restructuring. The FCC 2003 Decision does not make any reference to any AT&T argument that the plans were not timely restructured. CCI's president Larry Shipp has already submitted a certification in this case in which he stated he timely restructured the plans so there should not have been penalties in June 1996.

See CCI's Certification Exhibit E para page 3 para in petitioners initial FCC Comments in this case.

12) As per AT&T's Revenue at Risk Report at the time that we were denied transferring the traffic, CCI's plans volume was well above its volume obligation. Additionally these plans were all issued prior to June 17<sup>th</sup> 1994 anyway and were therefore forever immune from shortfall and termination obligations when we timely restructured them – which we did. In fact, there are dozens of audio tapes submitted to the District Court of many AT&T manager's who advised us that as long as the aggregator continued to use the same RVPP plan ID, which we did, it was a

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The Inga Companies provided CCI's president with all the Start dates of each of its plans and worked with CCI to order the restructures on a timely basis. **It is conclusive -----the fact that there were no charges inflicted by AT&T in 1995 absolutely confirms the plans (A) had already met its fiscal year revenue commitments or (B) were timely restructured; otherwise AT&T would have applied charges! It's as simple as that!** The penalties that were inflicted in June 1996 were charged by AT&T despite ordering a restructure in 1996 **based upon AT&T's 1 time restructure tariff interpretation.** Obviously if petitioners had not timely restructured in 1995 it would have been a **controversy and charges back in 1995.** The June 1996 charges were simply based upon AT&T's self-serving tariff interpretation of only 1 post June 17<sup>th</sup> 1994 restructure despite the plans commitments being 3 years. The FCC has a simple tariff interpretation as there are no disputed facts.

68) AT&T's September 30, 2016 comments page 11:

In addition, it produces a nonsensical result: the **“discontinued” plan continues to exist.** In effect, a provision designed to allow “discontinuance” without liability results in no discontinuance at all.

As AT&T account manager Joseph Fitzpatrick explained on a restructure “you don't have a new plan, you have another term assumption starting date (TASD).” An AT&T customer has the

option of upgrading (restructure) an existing plan by upgrading its total revenue commitment. Another 3-year plan starts that has more of a total revenue commitment than the total remaining revenue commitment left on the plan that is being upgraded. That is why the AT&T Network Services Agreement Form breaks down the option of NEW plan vs UPGRADE.

69) See the 2-page exhibit EE in petitioners 2006 initial filing. Here is the relevant part of the full exhibit. Notice the box **Upgrade** is selected.

70) Under AT&T's ridiculous interpretation there would be no reason to have as an option in its Network Services Commitment Form "**Upgrade**" an existing plan as every restructure under AT&T's interpretation would constitute a "new" plan. Obviously there is a distinct difference between an *upgrade* of an existing plan and a new plan. Petitioners have detailed that there were pros and cons of being a new plan. Only new CSTPII/RVPP plans could enroll end-user locations without penalty that were on their own Location Specific Term Plan contracts. Under an upgrade/restructure/discontinuance the terms and conditions carried forward.

AT&T's September 30, 2016 comments page 11:

#### **D. Declaratory Ruling Request IV.**

The Inga Companies plans on January 30, 1995, under tariff section 2.1.8., directly transferred end-user locations without the plan being transferred to Public Service Enterprises (PSE). Did AT&T violate section 2.1.8(c) by not transferring the Inga Companies designated locations due to AT&T's conceded

failure to issue a written denial within 15 days?

AT&T's September 30, 2016 comments page 11:

In its initial comments, AT&T explained that this request fell outside of the scope of the district court referral, was an improper candidate for resolution through a declaratory ruling and in all events was legally mistaken. AT&T Comments at 29-31. More specifically, AT&T noted that Petitioners effectively abandoned this claim in May 1995 when they choose to seek—and in fact obtained—an injunction compelling AT&T to accept Petitioners' transfer of their CSTP II plans to CCI, thereby making it impossible for Petitioners to transfer those plans or their associated traffic to PSE. *Id.* at 29-30. AT&T further took issue with Petitioners' claim that, in February 1995, AT&T was subject to any obligation under its tariff to object to the proposed Inga to PSE traffic only transfers. *Id.* at 31. In addition, AT&T explained that, regardless of whether it had any obligation to object that it did, in fact, make clear its objection to the proposed transfer well within 15 days of January 30, 1995. *Id.* at 30. In its reply comments, **Petitioners do not effectively respond to any of these points.**

71) Petitioners did indeed respond to each of these points. Petitioners 9.12.16 Comments page 68 para 147 through page 79 para 177 provides comment on each one of these points. In addition, the following needs to added:

(A) The Inga -PSE traffic transfer was **actually submitted to AT&T by CCI's president Larry Shipp** in January 1995 as the Inga Companies provided Letter or Agency to make the order directly from the Inga Companies plans as CCI endorsed the Inga to PSE transfer as the CCI-PSE was not being processed by AT&T.

(B) In Judge Politan's Court the Inga Companies and CCI each had its own counsel. The Inga Companies were represented by counsels: Charles Helein, Curtis Meanor and Lawrence Coven. CCI was represented by Thomas Tamlyn and Richard Yeskoo. The exhibit of the Politan hearing has already been submitted in this case. That exhibit shows that it was **CCI's counsel** Richard Yeskoo that made the argument to Judge Politan that the Court "needs to focus on the Inga to PSE" traffic only transfer because that does not involve the security deposit issue and AT&T did not provide written denial within 15 days. It must also be noted that AT&T's own counsel Fred Whitmer did not argue to Judge Politan that his own fraudulent use warning letter of February 6<sup>th</sup> 1995 constituted a 15-day written denial. Surely if Fred Whitmer believed is own

letter constituted a 15-day written denial Whitmer would have obviously rebutted CCI counsel Richard Yeskoo's 15-day requirement argument to Judge Politan. If the man himself didn't believe it was a written denial how can AT&T counsel 21 years' latter claim it was! AT&T counsel is feeding this Commission total nonsense!

(C) It is AT&T's position that the plan transfer did not go through until May 1995 and obviously the Inga to PSE transfer was ordered in January 1995—months before the plans actually were transferred. Even considering the fact that the CCI to PSE ORDER was placed prior to the Inga-PSE order the CCI to PSE order was dependent upon an extensive credit check as CCI was a new customer with \$54 million in billing to AT&T **whether or not CCI was transferring traffic** and thus the CCI-PSE transaction would have been processed after the Inga to PSE transfer in any event. Both orders were filed in the month of January 1995 for service to begin in February 1995. Whether the order was placed on January 13, 1995 or January 30, 1995 it is not relevant anyway as both orders were for February billing. The fact that AT&T could not hold up the traffic only transfer under 2.1.8 from CCI to PSE based upon security deposits did not mean AT&T could not hold up the Inga to CCI plan transfer based upon security deposits as CCI was a new customer with \$54.6 million in traffic. AT&T gave up its right for the security deposit in May 1995 based on the plan transfer. AT&T did provide PSE and CCI a letter within 15 days regarding security deposit on the plan transfer and thus petitioners decided that before the end of January the traffic can still get processed for February.

72) The above points clearly show the facts were that it did not matter to CCI that the Inga Companies would continue owning the plans. In fact, CCI's own counsel advised Judge Politan to focus on the Inga to PSE transaction. About 98% of the traffic was the Inga Companies. **CCI agreed that the Inga Companies at any time could have taken the plans back from CCI and AT&T had zero recourse to prevent the plans going back to the Inga Companies.** AT&T couldn't raise a security deposit issue on the Inga Companies as it had been a long time customer with an exceptional credit history. There was no impediment for CCI to transfer the plans back. If the traffic went to PSE from the Inga Companies plans the same 2 checks would come from Frank Scardino of PSE. CCI was getting 20% and Inga 80%. As AT&T's brief to Judge Politan noted CCI was the "strawman." The Inga Companies owned 98% of the traffic. The only reason CCI was involved was because it claimed it was combining several aggregator companies and

was getting a new Contract Tariff to compete against CT-516. **It is important that the FCC understand that the Inga Companies maintained all the customer service records** and did the customer service on the end-users even **after** the plans were transferred in May 1995. In June 1996 ---which of course was 13 months after the plans transferred the AT&T customers service billing records **for all end-user's bills still showed as the locations aggregator the Inga Companies and the Inga Companies phone number not CCI nor CCI's Florida phone number. Even after May 1995 all calls from end-users to the AT&T toll free number on the end-users phone bill resulted in "AT&T referring the end-users to the Inga Companies phone number for customer service."** When Judge Politan issued the May 1995 Order CCI and the Inga Companies informed AT&T to continue having the AT&T billing records show that the Inga Companies would continue being the point of contact reseller and all customer service changes would continue to go to the Inga Companies office in NJ. **AT&T agreed** not to change the end-user's records as the Inga Companies still held LOA and could move the accounts away from PSE on a dime. AT&T continued to recognize the Inga Companies as the end-user's reseller despite AT&T giving up its security deposit request and the plan being transferred in May 1995. CCI and Inga knew AT&T could not hold up the traffic transfer from CCI to PSE but understood its tariff did allow AT&T to hold up the Inga-CCI plan transfer based upon security deposits. Since the plan had to first be transferred to CCI for CCI to transfer the traffic to PSE, it resulted in the Inga to PSE traffic transfer before the end of the month.

73) The Commission 2003 Decision understood the objective was to temporarily get better discounts—stop account erosion and gets its own contract tariff. Additionally, the Inga Companies and CCI understood that the RVPP credits were a 2 months lagging credit. So if PSE was not able to meet its commitments to AT&T the petitioners could get its accounts back in 30 days and not have petitioner's end-users subjected to losing its discounts because the RVPP credits lagged 2 months. So the end-users continued to effectively be the Inga Companies as AT&T never changed the end-users billing records. When an end-user called the toll free number on the AT&T bill the AT&T customer service person would immediately say you need to contact your aggregator to make changes to your service and AT&T continued to refer all end-user locations to the Inga Companies after the plans transferred. It was the Inga Companies phones that rang off the hook when AT&T applied the charges in June 1996. The Inga

Companies held the Letters of Agency on all accounts. Even though the plans were transferred to CCI in May 1995 the end-user locations that were going to PSE **continued to recognize the Inga Companies as its reseller.**

73) Just as in any case a defendant can have multiple defenses a petitioner can have **multiple methods to accomplish its goal.** The simple objective was to transfer traffic only without the pre June 17, 1994 grandfathered “golden goose” plans being transferred. That is it! It did not make a difference to CCI or the Inga Companies which party owned the plans. Because each party knew the plans were grandfathered and in a **practical sense really did not have a revenue commitment.** In practical sense the plans really had more of a time commitment! When you restructure you are forced to upgrade the revenue commitment over another 3-year period and must do 3 years to be an EBO plan ---so an aggregator had to extend the time commitment! Portability of toll-free service took affect May 1<sup>st</sup> 1993---where an end-user could KEEP its toll-free phone number but change its carrier. Extending the time commitment to AT&T was a huge commitment as other carriers constantly called the Inga Companies offering their service.

The evidence submitted shows that it did not make a difference to JUDGE POLITAN which party owned the plans. Petitioners sought traffic transfers via 2.1.8 from BOTH CCI to PSE and Inga to PSE and both were included in the case complaint. Petitioners also sought account movement via 3.3.1.Q bullet 4 and were advised by AT&T processing manager Nancy Williams that AT&T legal said don’t process any accounts to CT-516’s discount plan of 66%. Petitioners were advised by AT&T counsel Charles Fash that 3.3.1.Q Bullet 4 allows account movement but even if the “proper mechanism” is used AT&T was denying it due to fraudulent use.

The point is petitioners were well within its right to raise multiple ways to effectuate a traffic only transfer and keep the golden goose plan. It is absolutely petitioners right in a **JOINT PETITION** to seek declaratory rulings on every possible method and **THEN CHOOSE WHICH OF THE METHODS** was best for petitioner to maximize damages. The Commission has already in effect decided the Inga Companies continued to have claims when in 2003 it recognized CCI had settled and it was a joint petition and the Inga Companies still had claims and proceeded with issuing Public Notice in 2003 to answer the 2 questions and issue the

October 2003 Order. The DC Circuit knew the plans were transferred and CCI and AT&T settled and still stated the Inga Companies still have its claims.

74) The Commission has already ruled that although petitioners used 2.1.8 to transfer traffic that it could also have used 3.3.1.Q bullet 4. The same logic applies to interpreting whether AT&T violated its tariff under either the CCI to PSE transfer or the Inga to CCI transfer. Furthermore, the Inga to PSE transaction actually was ordered whereas the Commission proceeded by analogy in determining the accounts could also move by using 3.3.1Q bullet 4 because petitioners were denied 3.3.1Q bullet 4 due to AT&T's fraudulent use claim. Therefore, it is even more justifiable that the Inga to PSE transaction be addressed as it was indeed an ordered transaction. It is not the Commission place to determine which account movement method a joint petitioner will seek damages on. The Commission just needs to interpret all declaratory rulings—especially ones that actually took place and AT&T itself recognized.

75) If the Commission rules that petitioners could have used 3.3.1Q bullet 4 delete and add and could have also used 2.1.8 it will be for petitioners to decide which maximizes damages. For example: The 2.1.8 traffic only transfers required a \$50 per account movement fee when promos were not in effect. However, 3.3.1Q Bullet 4 did not impose a \$50 per account movement fee. Petitioners would look at both account movement methods and see which one would have been better economically.

76) Remember the petitioners held full letter of agency on each account so it did not need to go back and get signatures to move the locations between plans or carriers. So at damages petitioners may advise Judge Wigenton that since the Commission has decided either section permits or does not prohibit traffic only transfers, maybe the best choice will be 3.3.1.Q Bullet 4. Likewise, the FCC needs to find that AT&T did not meet the 15 days' requirement in the Inga to PSE transfer.

77) **Section 2.1.8 (c)** required written denial within 15 days and was **not conditioned** upon first having met requirements under any other tariff section **such as 2.2.4 fraudulent use.** Therefore, the 15 days was not "tolled." The Commissions October 2003 Order FCC 2003 Order: Page 3

footnote 18 points out that if AT&T wanted to condition 2.1.8 (c) based upon a different tariff section it must refer to that section. (accord 47 C.F.R. § 61.54(j)(1994)(special rules affecting a particular item **must be specifically referred to** in connection with such item).

78) It's a JOINT PETITION. CCI decided to take AT&T's hush money and cooperate with AT&T to defend its self against the Inga Companies. The Inga Companies will decide before Judge Wigenton if it will base its damages on the Inga to PSE transfer or the CCI to PSE transfer or the 3.3.1Q bullet 4 transfer AT&T refused to process due to assertion of fraudulent use. A "joint petition" in which CCI participated in and its own counsel endorsed the seeking of the Inga to PSE alternative transfer, does not constitute having "abandoned" any claims and it is quite proper to seek multiple judicial remedies. CCI's counsel Richard Yeskoo advised the Court to focus on the Inga to PSE transfer but CCI counsel Yeskoo did not automatically abandon the CCI to PSE transaction. AT&T's logic makes absolutely no sense. A petitioner does not automatically abandon one method when it **also** pursues another—especially when the traffic transaction never went through and actual recognized reseller by AT&T and CCI was the Inga Companies whether or not CCI the Inga Companies also held the grandfathered pre June 17, 1994 plans.

AT&T's September 30, 2016 comments page 12:

By making that election, moreover, **Petitioners were no longer in a position** to transfer their plans (**or traffic on the plans**) directly to PSE, as CCI became the plan owner. Consequently, any ruling by either the District Court or the Commission on this issue would be pointless; the claim was waived and mooted by Petitioners' election to transfer the plans to CCI.

79) The May 1995 plan transfer to CCI does not negate the January 1995 Inga to PSE traffic transfer in which AT&T recognized it and conceded it did not meet the 15 days' written denial. However, even in the CCI to PSE traffic transfer the Inga Companies **were still according to AT&T's own customer service records the reseller on the traffic and maintained LOA on all end-users**. So the Inga Companies did maintain sole authority and thus the ability to again

transfer the end-user location traffic anywhere it wanted. CCI recognized that CCI and AT&T could not prevent the Inga Companies from moving the accounts off the plans held by CCI as the Inga Companies were still the designated reseller and held LOA also. Even if the Inga Companies did not hold LOA and were not recognized by AT&T as the reseller the Inga Companies still owned the accounts with CCI and CCI was paying the Inga companies 100% of the revenue on its accounts as the end-users were still under the 28% plan. The end-users under CCI's plan did not have a time or volume commitment so if the Inga Companies wanted it could move the accounts directly to PSE and CCI would still have its plan. **You don't need a plan to put traffic on PSE's plan!** The plan has nothing to do with the traffic. The end-users were free to move anywhere they wanted and since the Inga Companies held LOA it could move them anywhere. The party that owned and controlled the end-user accounts was always the Inga Companies. When the plan was transferred in May 1995 to CCI there was no database of end-user records provided to CCI by either AT&T or the Inga Companies. CCI didn't even know who the end-users were that were on its plan. The agreement with CCI was the end-users were the Inga Companies end-users no matter what plan Mr. Inga decided the end-users should on. CCI did not BUY the traffic from the Inga Companies. The traffic was always the asset of the Inga Companies. **Resellers get paid on traffic not on plan ownership!**

AT&T's September 30, 2016 comments page 12:

As AT&T has previously explained, under Section 2.1.8 of its tariff, the 15-day notice period **did not begin** until the "new" customer notified AT&T in writing that it was agreeing to assume all obligations of the "former" customer

80) **Section 2.1.8 (c) does not state that AT&T first has the right to see if any other section of its tariff will prohibit the transfer and then it will start the 15 days' clock from that point.** As the FCC 2003 Order stated AT&T's argument fails on two long standing rules:

(47 C.F.R. § 61.54(j)(1994)(special rules affecting a particular item **must be specifically referred to** in connection with such item) and

And

**Ambiguities in a tariff are to be resolved against the carrier and favorably to customers.** The Associated Press Request for Declaratory Ruling, File TS-11-74, Memorandum Opinion and Order, 72 FCC 2d 760, 764-65, para. 11 (1979) (citing *Commodity News Services, Inc. v. Western Union*, 29 FCC 1208, 1213, para. 3, *aff'd*, 29 FCC 1205 (1960)).

As the Commission understands there was no controversy in 1995 as to PSE not assuming all obligations of the “former” customer. The Inga to PSE traffic only transfer agreed to do a traffic only transfer in which PSE did agree to assume all obligations of the former customer. There is no letter attached to the Inga to PSE transfer or any notations in which the Inga to PSE transfer was being conditioned in any way. If there **was an actual controversy** as to which obligations transfer, then AT&T **had 15 days to deny it in writing**. Again AT&T counsel Fred Whitmer himself, who wrote the 2.6.95 letter never claimed to Judge Politan that his own 2.6.95 letter denied the Inga to PSE transfer.

AT&T’s September 30, 2016 comments page 12:

There is also no merit to Petitioners’ equally irrelevant claim that AT&T failed to object to the proposed Inga to PSE traffic only transfer within 15 days. At best, Petitioners’ assertion that the February 6, 1995 letter from AT&T’s counsel (Fred Whitmer) was not a denial but rather a mere “warning” **raises a fact issue that precludes the issuance of a declaratory ruling** on the Inga to PSE traffic only transfer (if the issue were even in the case).

81) The February 6<sup>th</sup> 1995 speaks for itself. It is not a denial of anything. A fact is a fact. AT&T can say it’s a denial but the Commission can read it and see it is at best a fraudulent use warning letter. A warning is not a denial. A denial is a denial. During the March 1995 Oral argument in Judge Politan’s Court AT&T’s counsel Whitmer who wrote the 2.6.95 letter did **not** rebut CCI’s counsel Yeskoo’s position that the Inga to PSE transfer was not denied in writing within 15 days. If AT&T’s own counsel who wrote the letter did not declare it was a denial that is way beyond what is necessary for the Commission to act.

AT&T's September 30, 2016 comments page 12:

Further, the distinction that Petitioners seek to draw is not credible. In his letter, Mr. Whitmer made clear that AT&T objected to any transaction that sought to separate the plan obligations and liabilities from the traffic, which is exactly what the purported Inga to PSE traffic only transfer would have done. Consequently, it is nonsensical to contend that AT&T was not "rejecting" the proposed Inga to PSE traffic only transfer.

82) Fred Whitmer did not advise Judge Politan in March of 1995 during Oral argument that his 2.6.95 letter was a written denial. AT&T has the March 1995 oral argument hearing transcript and if its counsel Whitmer stated that his 2.6.95 letter served as official written denial of the Inga to PSE transfer, then current AT&T counsels would have provided it to the Commission. The FCC understands that the Whitmer letter was a fraudulent use ----"in the event" ---warning letter. Mr Whitmer was arguing that because under the tariff the revenue and time commitments do not transfer AT&T was concerned that the Inga Companies would not be able to meet the revenue commitments on the non-transferred plan. Counsel Whitmer requested that the Inga Companies get back to him and Charles Helein called AT&T counsel Whitmer and Whitmer was advised that the plans were pre June 17<sup>th</sup> 1994 ordered and his "concern" for the Inga Companies not meeting its plans revenue commitments was not warranted. AT&T counsel Freddy Whitmer's position to Judge Politan was based upon AT&T's sole defense of fraudulent use because the plan commitments (revenue and time commitment ) do not transfer on a traffic only transfer.

Here is further clarification of AT&T counsel Whitmer's position:

The AT&T counsel Judge Politan was referring to is none other than AT&T counsel Whitmer:

"Indeed, AT&T's own counsel focused the issue by indicating that the tariffed obligations "*involved herein*" are all tariffed obligations, for which "CCI, not PSE" would be obligated. (Politan March 1996 pg.17 fn. 7)

Freddy Whitmer 2.6.95 Letter:

"Mr. Inga's efforts to transfer these end users and leave the plans intact with their commitments, AT&T will seek to enforce its rights *in the event* shortfall and termination

**charges become due under the tariff** and will hold Mr. Inga personally liable for his conduct intended to deprive AT&T of its **tariff charges.**”

83) Yes, **in the future** ---in the event---we will hold you Mr. Inga personally responsible if your companies do not meet the revenue commitments on those plans! But in the meantime it’s not a written denial of anything! AT&T counsel Freddy Whitmer detailed PSE does not need to assume plaintiff’s obligations when AT&T was asserting its “Fraudulent Use” defense on 3/21/1995 cross examination of Mr. Inga:

Whitmer: Q: Mr Inga, you know, do you not that if the service, **except for the home account**—or Mr. Yeskoo called it the **“lead account”** ---is transferred to PSE **the shortfall and termination liabilities remain** with Winback & Conserve, **isn’t that correct?**

Inga: Yes

Below during the March 1995 Oral Argument AT&T counsel Whitmer in asserting AT&T’s Fraudulent Use defense kept stressing that the shortfall and termination commitments don’t transfer. Note Mr Whitmer is saying Winback & Conserve (an Inga Company) or CCI recognizing both January 1995 traffic transfers. Judge Politan got so fed up with Whitmer stressing that under the tariff the plan commitments don’t transfer that it led to the following response:

AT&T’s Whitmer: And one of the obligations of the customer, **Winback & Conserve** or CCI, that did not go to PSE in the attempted transfer was the obligations for shortfall and termination, correct?

Mr Shipp: **That's correct.** And we so identified that on the transfer of service document.

The Court: **I know all these facts, Mr Whitmer. I really do. I swear to God.**

Mr Whitmer: I have no further questions.

Judge Politan was ready hit Whitmer over the head with the gavel if he again made the point that plan commitments don’t transfer and thus AT&T could use 2.2.4 to stop a permissible traffic only transfer. There was no dispute as to these facts as CCI’s Mr. Shipp agreed that this is what the tariff required. Judge Politan simply was not buying AT&T’s argument because as he said the plans were pre June 17, 1994 grandfathered. As grandfathered plans Judge Politan correctly

understood that for all practicality purposes CSTPII/RVPP plan commitments are “**illusory concepts.**” (supra page 11 Politan determination.)

84) There are no disputed facts that the AT&T counsel Whitmers’ letter addressed AT&T’s fraudulent use assertion..... “*in the event*” shortfall and termination charges become due under the tariff” ---we are talking the **FUTURE** here! Current AT&T counsel’s revisionist history of what its own counsel was arguing is absolutely pathetic! The AT&T counsel Whitmer letter was not denying the Inga to PSE transfer based upon PSE not accepting the revenue and time commitments--- as Freddy Whitmer explicitly kept making the point to Judge Politan that **PSE is not responsible for assuming the non-transferred plans revenue and time commitment.** This is not advocacy being engaged in by AT&T’s counsel. This is intentional fraud on the FCC. AT&T’s own counsel who wrote the 2.6.95 letter **did not argue** in March 1995 that his own letter was a written denial ----but incredibly you have current counsels now asserting 21 years later that this 2.6.95 letter was a written denial AND that it was a written denial of PSE not assuming obligations! AT&T’s counsel Mr. Richard “self-evident” Brown was involved in the case in 1995-1996 and he clearly understood AT&T’s position was fraudulent use—PSE does not assume revenue and time commitments on a traffic only transfer.

85) AT&T’s September 30, 2016 comments page 13:

#### **E. Declaratory Ruling Request V.**

In January 1995 did AT&T’s Tariff No 2 Section 3.3.1Q bullet 4 allow petitioners to move the designated end-user locations by deleting the locations from Petitioners’ plans and adding those locations to PSE’s plan and thus would it result in plaintiff’s ability to keep its plans and its revenue and time commitments associated with the non-transferred plans?

AT&T’s September 30, 2016 comments page 13:

Petitioners assert that they attempted to delete and add some of the traffic in **separate transactions**, pointing to “evidence,” *i.e.*, a letter from an AT&T attorney in mid-1995 **relating to a separate transaction.**

86) AT&T counsel Charles Fash letter addressed the tariff not just a transaction. The evidence

shows petitioners engaged in a 2.1.8 transaction with another aggregator Mr. Swain in which a substantial percentage of Mr Swain's locations were being transferred to petitioners. The quantity of the 2.1.8 transfer was very small. Under \$600,000 per year being transferred to petitioners plans. AT&T counsel Charles Fash letter explained to Charles Helein who was counsel for both Mr Swain and the Inga Companies that 3.3.1.Q bullet 4 (delete and add) permitted ("proper mechanism") account movement but even that small \$600,000 per year revenue movement if done under 3.3.1.Q bullet 4 would be denied under tariff section 2.2.4 fraudulent use.

87) When AT&T counsel Mr. Fash felt justified to invoke 2.2.4 "fraudulent use" to prevent account movement under 3.3.1Q bullet 4 ----for only **\$600,000** of traffic---- that was obviously petitioner's denial that its **\$54,600,000** in revenue was certainly not getting moved. AT&T's position is that it was a separate transaction! Mr. Fash was simply advising that any substantial account movement under 3.3.1Q bullet 4 was being denied by AT&T under fraudulent use. The fact that the letter from AT&T counsel would deny a very small **\$600,000** revenue transfer, obviously lead petitioners to believe AT&T would never allow its **\$54,000,000** to transfer. The Mr. Fash letter was speaking about the tariff in general not allowing large account movements; so obviously this pertained to **\$54,000,000**. Is AT&T incredibly saying it was selectively discriminating and that what Counsel Fash said regarding the tariff in general did not apply to all AT&T customers? Especially when the Inga to PSE traffic transfer is 9 times larger and AT&T had already denied it based upon fraudulent use under 2.1.8! AT&T's "separate transaction" argument is pathetic.

88) AT&T's September 30, 2016 comments page 13:

Moreover, as AT&T explained, this claim is squarely foreclosed by the D.C. Circuit's reasoning. While the D.C. Circuit did not directly rule on Petitioners' delete and add *claim*

As AT&T points out the DC Circuit “**did not directly rule**” on this issue and thus now that the facts are well developed and AT&T’s own counsel Charles Fash has confirmed that 3.3.1.Q bullet 4 allows account movement -----and the plans revenue and time commitment do not transfer -----the FCC can now rule on this and the DC Circuit can review. Section 3.3.1.Q Bullet 4 also must be processed under two long standing rules of law:

(A) 47 CFR 61.2 that tariff provisions be “**clear and explicit**”

(B) 47 C.F.R. § 61.54(j)(1994)(special rules affecting a particular item **must be specifically referred to** in connection with such item).

Section 3.3.1.Q Bullet 4 didn’t explicitly say it was dependent upon first satisfying fraudulent use to prohibit a delete and add transfer and did not refer to 2.2.4 fraudulent use.

AT&T’s September 30, 2016 comments page 13:

Finally, Petitioners’ claim that the transfer of the traffic pursuant to Section 2.1.8 is no different than a transfer accomplished by deleting and adding locations in separate transactions (Ptrs. Reply Comments at 86) is simply false. As AT&T explained in connection with its appeal of the Commission’s *2003 Order*, there are significant differences. **In contrast to a transfer under Section 2.1.8, there is a risk that the existing end users might lose their 800 numbers and it would almost certainly take longer to complete the transfers.**

89) More nonsense! Why would AT&T counsel even attempt such nonsense when it knows petitioners did customer service on 10,000 + accounts for many years! Petitioners did account movement both ways and when a location is deleted and added via 3.3.1 Bullet 4 or bilaterally transferred via 2.1.8 there is **zero-time difference to process the accounts**. There is no change in the actual physical phone number. Both methodologies just have an end-user “**record change**,” not a physical movement of a phone line nor even the repointing of line-----what was referred to as an “AT&T Ready Line” ----where the customer pointed its toll-free number to its Plain Old Telephone Service (POTS) line. The locations POTS did not change and the toll-free

phone Number did not change! It's an accounting record keeping change not an engineering change. In fact, in this particular case the end-users record as still being with the Inga Companies as its reseller never changed and if the end-user went to PSE's plan the end-user record still did not have to change as the end-user locations could still be referred to the Inga Companies for service as AT&T did when CCI held the golden goose pre June 17,1994 plans.

90) No location was going to lose its toll free number. PATHETIC NONSENCE!!!! It would not take any longer to make the record change. It didn't take longer but what if it did? AT&T was obligated to get the work done and would hire more people to do it. Where is AT&T's documentation of all these people losing their phone numbers! It is so ridiculous it's hysterical! As per Charles Fash if the "**proper mechanism**" for moving accounts was 3.3.1.Q bullet 4 you have to wonder why all these people are going their phone service! If the end-users lose their phone numbers under the "**proper mechanism**" 3.3.1.Q bullet 4 then they really are going to get screwed using the "**improper** mechanism 2.1.8!" Please AT&T show the Commission a study on all the businesses who lose their phone numbers being deleted from one AT&T plan and enrolling on another AT&T plan! There is no pic change involved. No change in the underlying carrier! Petitioners are switchless reseller marketing companies. AT&T really must take this Commission for fools! If it wasn't 21 years of intentional fraud you would just sit back and laugh at AT&T counsel's nonsense.

91) AT&T's September 30, 2016 comments page 13-14:

Further, the party adding locations to its plan would be required to establish that each of the end user customers had consented to the transfer so as to avoid concerns as to slamming. Accordingly, this is yet another reason why the Commission should not address this issue at this point in the proceeding.

The Inga Companies had full LOA on all end-users anyway so no consent was needed. Petitioners don't believe consent would be needed as the underlying carrier is still AT&T. No pic change. The reseller did not have the ability to select the rate to charge the end-user as AT&T provided the 4 designated discount rates and AT&T did the billing. But *even if* consent is needed

it still does not prohibit the use of 3.3.1Q Bullet 4. The billing is still done by AT&T and each end-user location gets a bigger discount and there is no time or revenue commitment from the end-users. Not a tough sale—especially when you already have the contact database and all the businesses fax numbers! Yes fax numbers--remember this pre Internet generation! It certainly is not a valid reason to not rule as 3.3.1.Q bullet 4 could be used. Under both methods the revenue and time commitments stay with the non-transferred plan. Under both methods the bad debt responsibility goes to PSE on the accounts that end up on its plan and the bad debt stays with the non-transferred plan on the locations that did not move to PSE. Absolutely 3.3.1Q bullet 4 as an alternative to 2.1.8 that was requested by petitioners in its 1996 declaratory ruling request was also an addition way to move locations without the plan. Notice AT&T did not argue that 3.3.1 Q bullet 4 mandated that the revenue and time commitments must transfer to PSE ----as Charles Fash letter stated that revenue and time commitments don't transfer on a 3.3.1 Q bullet 4 transfer.

AT&T's September 30, 2016 comments page 14:

**F. Declaratory Ruling Request VI.**

Did AT&T's complete shutdown of section 2.1.8 to all traffic only transfers, of any quantities of locations transferred, to prevent all traffic only, non-plan transfers, constitute an illegal remedy or any other violation of section 2.1.8?

AT&T's September 30, 2016 comments page 14:

As AT&T explained in its September 1 Comments, this issue falls outside the scope of the district court referral which focuses on whether, under the plain language of Section 2.1.8, Petitioners could transfer substantially all of their traffic without the transferee (PSE) agreeing to assume all of Petitioners' obligations related to that traffic. AT&T Comments at 34-35. Further, even if this issue were relevant, there are clear factual issues that preclude resolution of this issue by declaratory ruling. *Id.* at 33-34. In their reply comments, **Petitioners do not rebut either of these points**

92) Petitioners did rebut these points. Petitioners 9.12.16 Comments page 88 para 197 covers this

in depth. Judge Bassler's district court referral of 2006 regarding which obligations transfer on a traffic only transfer under 2.1.8 was addressed by the FCC *October 2007 Order*. That 2007 *Order* determined Judge Bassler's referral regarding which obligations transfer did not expand the scope of the original Third Circuit referral on 2.2.4 fraudulent use. Therefore, this obligations allocation issue is moot. It is also moot because AT&T used an illegal remedy by shutting down 2.1.8 no matter how many locations were being moved and no matter which obligations were being transferred. So the Judge Bassler referral is moot because which obligations transfer was not a controversy in 1995 and his question is moot as AT&T declared 2.1.8 no longer allowed traffic only transfers—no matter which obligations transfer. How do you determine which obligations transfer when AT&T states that it “no longer” allows traffic only transfers under 2.1.8? How do you transfer less traffic to comply with 2.2.4 fraudulent use when it is shut down to all traffic only transfers! It must be noted that although petitioners were not informed by AT&T's Joyce Suek and counsel Charles Fash until June/July respectively, the shutdown probably occurred right after the January 1995 transfers as AT&T has **not provided any evidence** of any other traffic only transfers that took place after January 1995. Petitioners would assert that **unless AT&T provides evidence** that it allowed other traffic only transfers under 2.1.8 after January 1995 the Commission should determine that the illegal remedy imposed upon **the Inga Companies traffic** is retroactive to January 1995.

AT&T's September 30, 2016 comments page 14:

**Because there are clear factual issues regarding how AT&T responded** to requested traffic-only transfers after January 1995, this issue is not appropriate for resolution by declaratory ruling.

93) Both AT&T order processing manger Joyce Suek and AT&T counsel Charles Fash confirmed 2.1.8 was not allowing traffic only transfers. The facts are as explicit as can be. Joyce said they no longer do it and Charles Fash said 2.1.8 does not allow transfer of traffic only 3.3.1Q Bullet 4 allows it. **AT&T has not presented evidence showing that it did allow traffic only transfers after January 1995 under section 2.1.8.** AT&T raises no factual disputes. Based upon the facts presented and lack of evidence from AT&T showing it did allow traffic only transfers and didn't totally shut down 2.18 the only thing that can be decided by the

Commission is AT&T used an illegal remedy. If AT&T does show it did 2.1.8 traffic only transfers but only refused the Inga Companies, then it is discrimination under 202. Without AT&T evidence of post January 1995 section 2.1.8 traffic only transfers the Commission must simply decide AT&T used an illegal remedy by totally shutting down 2.1.8 to all traffic only transfers.

94) As the FCC 2003 Decision stated, AT&T's sole defense was section 2.2.4 fraudulent use in January 1995. When AT&T totally shut down 2.1.8 to all traffic only transfers it eliminated the ability for petitioners to transfer less traffic so as to fall under "whatever guidelines" were needed to no longer be suspected by AT&T of fraudulent use or to transfer whatever obligations AT&T required. AT&T used an illegal remedy of totally shutting down 2.1.8 to all traffic only transfers. **Joyce Suek did not say that we will do a traffic only transfer under certain conditions.** Her statement was that AT&T simply "no longer" did traffic only transfers. AT&T did not change section 2.1.8 from 1995 to June 1995. It just decided –screw the Commission's refusal to retroactively change 2.1.8 via Tr8179; we are AT&T and we are going to do whatever the hell we want! AT&T counsel Charles Fash said 2.1.8 simply did not allow traffic only transfers so it didn't matter which obligations were to transfer nor did it matter how many end-user accounts were to transfer. The evidence speaks for itself. AT&T's position was point blank: Total shut down of 2.1.8! No accounts are getting to 66% period via 2.1.8 or 3.3.1.Q bullet 4.

95) AT&T's September 30, 2016 comments page 14:

Even if AT&T had refused to process "all traffic-only transfers" beginning in mid-1995, that would not support Petitioners' position that AT&T acted unlawfully in refusing to process the CCI-to-PSE traffic only transfers in January 1995.

AT&T's tariff section 2.1.8 did not change from January to June 1995 but AT&T stated it made a material change in the terms and conditions of 2.1.8 by "no longer" allowing any traffic only

transfers in June 1995. Since it is AT&T's position in June/July 1995 that the January 1995 version of 2.1.8 actually did not allow traffic only transfers at all—then DC Circuit determined this would be an AT&T violation in 1995 as 2.1.8 did allow traffic only transfers. Conversely if 2.1.8 allowed traffic only transfers then AT&T using an illegal remedy by stopping all traffic only transfers under 2.1.8 in mid-1995 addresses AT&T's sole defense in 1995 of fraudulent use. Petitioners can't transfer less under 2.1.8 because no traffic only transfers were allowed at all—no matter which obligations transferred and no matter how many accounts. Total illegal shut down of 2.1.8. and it needs to be retroactive to the Inga Companies \$54.6 million in traffic in January 1995.

96) AT&T's September 30, 2016 comments page 14-15:

**G. Declaratory Ruling Request VII.**

Under the FCC's October 1995 Order AT&T was ordered to file with the Commission, within 6 days a **substantial** cause pleading to meet the **substantial** cause test when AT&T customers objected to the following 2 tariff sections: **1) Transfer or Assignment of Service and 2) Discontinuation With or Without Liability**. Does AT&T's failure to comply with the FCC 1995 Order to timely file and meet the substantial cause test preclude it from raising any defenses under these tariff sections?

97) AT&T's September 30, 2016 comments page 15:

As explained above, the *October 1995 Order* has nothing to do with AT&T's efforts to enforce the terms of its existing tariffs and Petitioners' claims to the contrary rest on a blatant misreading of this *Order*. See Response to Declaratory Request I *supra*. Consequently, Petitioners' rampant speculation throughout their reply submission as to **what might have happened if AT&T had made substantial cause filings relating to all of the various disputes identified by Petitioners in their reply comments is pointless.** No such obligation existed. There is, likewise, no merit to Petitioners' claim that the *October 1995 Order* **has some relevance to the January 1995 transfer requests because the CCI to PSE transfer was "pending" as of October 1995** (Ptrs. Rep. at 107-08). The tariff provision existing in January 1995, not any subsequent modifications by AT&T to that provision, governs the parties' respective duties and obligations regarding the January 1995 transfer requests.

See petitioner comments page 3 para 8 supra. Petitioners agree that AT&T is bound to the terms and conditions of petitioners pre June 17, 1994 grandfathered plans and the service ordered under section 2.1.8 as of January 1995 for both traffic only transfers. However, for AT&T to assert that AT&T had no obligation to petitioners under the FCC's *October 1995 Order* and that Order is pointless as to petitioners and has no relevance to the traffic only transfers is false.

98) The *October 1995 Order* is not dependent upon a transaction date. It simply mandates that for the year period following the *Order* that any tariff changes AT&T made in which there were customer objections, AT&T meet the substantial cause test. Filing a substantial cause test would have provided an opportunity to clarify the changes in the terms and conditions between the January 1995 version of 2.1.8 and the changes made in November 1995, May 1996 and August 1996 to 2.1.8. Were the post FCC 1995 Order actual prospective changes in the terms and conditions or were the language changes "mere clarifications" of what the previous January 1995 version already meant? Any time there is a change in a change in the language or a change in the terms and conditions under the same language it SHEDS LIGHT on the previous versions of the tariff. What are the differences in the NEW TERMS AND CONDITIONS compared to the previous terms and conditions? AT&T's nonsense that a substantial cause test was pointless and not relevant because the traffic transfers were done January 1995 is trying to evade the issue. The point is there would have been clarifications FROM THE FCC for Judge Politan before March 1996 that 2.1.8 allows traffic only transfers, is not conditioned by 2.2.4 fraudulent use, and 2.1.8 (c) is not conditioned by any tariff section and thus the 15 days are not tolled and revenue and time commitments do not transfer. Of course AT&T has to abide by the January version of 2.1.8 but that doesn't mean it escapes being forced to meet the substantial case test and face petitions to suspend or reject and face "primary jurisdiction" interpretation.

99) Section 2.1.8 (c) requirement of 15 days to deny in writing would have been covered and clarity would have been obtained in November 1995 before the March 1996 Politan Decision. Petitioners would have been able to explicitly advise Judge Politan what the terms and conditions were for the January 1995 version of 2.1.8 based upon the change or clarification of 2.1.8 c.

100) Judge Politan did receive clarification in his certification from Richard Meade in late 1995 that 2.1.8 allowed traffic only transfers and AT&T was going to “prospectively rely” upon security deposits against potential under shortfall. That clarified what the January 1995 version required and what future versions of 2.1.8 required. So there was a distinct benefit to understand the post FCC 1995 Order terms and conditions and compare the prospective change to the January version. Richard Meade confirmed that plan obligations do not transfer. The future clarity of the post October 1995 Order language modifications would have been extremely beneficial to petitioners---even though AT&T was obligated under the January version. The issue is Richard Meades’ certification while helpful to Judge Politan---- was not FROM an FCC substantial cause test determination and thus Judge Politan got vacated on primary jurisdiction grounds.

101) The key here is that AT&T counsel lied to Judge Bassler and Judge Wigenton that 2.1.8 required the revenue and time commitment to transfer on a traffic only transfer. Mr Brown further lied to Judge Wigenton and advised her Court that the November 1995 language modification of 2.1.8 that introduced security deposits against potential shortfall was worthless to her Court because petitioners were grandfathered under the January 2.1.8 version so no security deposits would be needed. AT&T counsels were able to scam her Court that the exemption of not having to post security deposits against potential shortfall----- because the plans were pre June 17, 1994 grandfathered ----meant that general terms and conditions that revenue commitments don’t transfer on a traffic only transfer---- is not relevant to petitioners. AT&T scammed her by confusing the June 17, 1994 EXEMPTION from the general terms and conditions. The ironic part of this is AT&T is now arguing that although petitioners were pre June 17, 1994 grandfathered that the shortfall/time commitments are still real! So AT&T just got done scamming Judge Wigenton that 2.1.8 has no relevance as to which obligations transfer because the plans were security deposit against potential shortfall immune; but then argues to the Commission that even though petitioners are pre June 17, 1994 immune the non-transferred revenue commitments are real. If AT&T filed a substantial cause pleading to meet the substantial cause test there would have been substantial additional explicit tariff language that would have assisted Judge Bassler and Judge Wigenton and at minimum it would have not been vacated on primary jurisdiction grounds as the FCC would have already interpreted the

controversies/uncertainties.

102) The fact that the Third Circuit vacated Judge Politan's March 1996 Decision on primary jurisdiction grounds would not have occurred as AT&T would have needed to file in November 1995. The FCC would have been involved in all the objections post October 1995 and the Third Circuit would not have sent the case to the FCC on primary jurisdiction grounds.

103) It is true that the tariff provision existing in January 1995, not any subsequent modifications by AT&T to that provision, governs the parties' respective duties and obligations regarding the January 1995 transfer requests. However, that does not mean a FCC substantial cause test would not have brought clarity to what respective duties and obligations **were in January 1995**. By definition a future change compares the change to the previous versions. The FCC *October 1995 Order* only requires a tariff change in the 1-year period and an objection! That is it! Petitioners met both criteria.

104) AT&T stated that "the tariff provision existing in January 1995, not any subsequent modifications by AT&T to that provision, governs the parties' respective duties and obligations regarding the January 1995 transfer requests." Then what was its excuse for not filing a substantial cause pleading in 1995-1996 regarding the **June 1996 penalty infliction**? AT&T offers no reason. There were changes to the Discontinuation without Liability tariff within the 1-year period and there were obvious objections. Why didn't AT&T meet the substantial cause test? If AT&T filed there would have been substantial clarity to the terms and conditions of restructuring. How many times could a plan be restructured? LSTP's assumption with or without penalty depending upon new plan or upgraded restructured plan. The June 1996 penalty infliction controversy, regarding the duration of immunity of the June 17<sup>th</sup> 1994 exemption, occurred during the 1-year period following the effective date of the FCC *October 1995 Order*!

## Conclusion

AT&T by not commenting on the 1 declaratory ruling request is conceding its violation. Regarding the other declaratory ruling requests, the defenses AT&T provided ranged from nonsense to pure intentional fraud. Petitioners would like the Commission to issue Public Notice on the additional declaratory ruling requests and go into the DC Circuit Court loaded with violations.

Under the FCC *October 1995 Order* para 133 the Commission has the ability on a case by case basis to relief petitioners from its revenue commitment. If ever there were a case that deserved the Commission to rule the Inga Companies of locations with \$54.6 million of revenue should have been transferred to the 66% plan and that the Inga Companies CSTPII/RVPP EBO plans revenue and time commitment should be vanquished---it is this case! That will leave the NJFDC with no impediment to apply damages. The we can move on to the Ethics issues to deal with AT&T counsels intentional fraud exposed within this case.

AlIngaPresident  
Group Discounts, Inc

# EXHIBIT A

**From:** AL [mailto:townnews@optonline.net]  
**Sent:** Tuesday, September 13, 2016 8:48 AM  
**To:** Brown, Richard <rbrown@daypitney.com>; ray@grimes4law.com; Deena Shetler <Deena.Shetler@fcc.gov>  
**Subject:** FW: Richard Brown--

Richard

Attached are two FCC filings in response to the Commissions August 11<sup>th</sup> 2016 Public Notice to resolve the 7 Declaratory Ruling Requests.

The Word Doc primarily focuses on petitioner 800 Services, Inc. The PDF and the 2 files of exhibits is the Inga Companies reply comments. Petitioners have outlined many AT&T tariff violations.

The key though is that AT&T seems to have misread the FCC's *October 1995 Order*. The FCC Order simply required that AT&T meet the FCC's substantial cause test when an AT&T customer objected to any AT&T tariff change made in the 1-year period following the FCC October 1995 Order.

**"Where the affected customer objects to the change, AT&T will file the change with the Commission on 6 days' notice. With respect to the 14 or 6 days' notice filings, the substantial cause test will be applicable to the same extent as it is today."**

The exhibits show changes to all relevant tariff sections during this 1-year period and obviously there was "objection" as during this period the case was being argued in the NJFDC as Judge Politan did not rule till March 1996 and then argument continued before the Third Circuit leading to the 1996 Third Circuit referral.

If AT&T had adhered to the FCC *October 1995 Order* the Commission would have ruled in 1995-1996 and AT&T would not have been able to represent to the Third Circuit that Judge Politan's March 1996 Decision should be vacated on primary jurisdiction grounds as the FCC would have already opined.

Therefore, AT&T failed to file to meet the substantial cause test as there were objections to AT&T's interpretation of the terms and conditions of several tariff sections. AT&T was required to plead its case to the FCC that AT&T's interpretation of the terms and conditions of the various tariff sections covered was appropriate because petitioner's interpretation of the tariff language was in 1995 and continues to be, substantially different than AT&T's.

If the FCC follows its normal protocol will rule AT&T can't rely upon its defenses due to for failure to meet the substantial cause test.

Can you explain why AT&T decided not to file and meet the substantial cause test at the FCC in 1995-1996?

Al Inga

Group Discounts, Inc

**SECOND EMAIL BELOW**

**From:** AL [mailto:townnews@optonline.net]  
**Sent:** Wednesday, September 14, 2016 2:22 PM  
**To:** 'Brown, Richard H.' <rbrown@daypitney.com>  
**Cc:** 'ray@grimes4law.com' <ray@grimes4law.com>; 'nende@tlgdc.com' <nende@tlgdc.com>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'Amy.Bender@fcc.gov' <Amy.Bender@fcc.gov>; 'David.Gossett@fcc.gov' <David.Gossett@fcc.gov>; 'Deanne.Erwin@fcc.gov' <Deanne.Erwin@fcc.gov>; 'DORPTO@dor.state.fl.us' <DORPTO@dor.state.fl.us>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'Jane.Halprin@fcc.gov' <Jane.Halprin@fcc.gov>; 'Jay.Keithley@fcc.gov' <Jay.Keithley@fcc.gov>; 'Jennifer.Tatel@fcc.gov' <Jennifer.Tatel@fcc.gov>; 'Jessica.Rosenworcel@fcc.gov' <Jessica.Rosenworcel@fcc.gov>; 'Jim.Bird@fcc.gov' <Jim.Bird@fcc.gov>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'John.Williams2@fcc.gov' <John.Williams2@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Julie.Veach@fcc.gov' <Julie.Veach@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'laynede@dor.state.fl.us' <laynede@dor.state.fl.us>; 'Linda.Oliver@fcc.gov' <Linda.Oliver@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Matthew.Berry@fcc.gov' <Matthew.Berry@fcc.gov>; 'MeredithAttwell.Baker@fcc.gov' <MeredithAttwell.Baker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Mignon.Clyburn@fcc.gov' <Mignon.Clyburn@fcc.gov>; 'Mike.ORielly@fcc.gov' <Mike.ORielly@fcc.gov>; 'Nicholas.Degani@fcc.gov' <Nicholas.Degani@fcc.gov>; 'Pamela.Arluk@fcc.gov' <Pamela.Arluk@fcc.gov>; 'Randolph.Smith@fcc.gov' <Randolph.Smith@fcc.gov>; 'Richard.Welch@fcc.gov' <Richard.Welch@fcc.gov>; 'Robert.McDowell@fcc.gov' <Robert.McDowell@fcc.gov>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'Sharon.Gillett@fcc.gov' <Sharon.Gillett@fcc.gov>; 'Sharon.Kelley@fcc.gov' <Sharon.Kelley@fcc.gov>; 'Stephanie.Weiner@fcc.gov' <Stephanie.Weiner@fcc.gov>; 'Suzanne.Tetreault@fcc.gov' <Suzanne.Tetreault@fcc.gov>; 'thomas.wheeler@fcc.gov' <thomas.wheeler@fcc.gov>; 'Tom.Wheeler@fcc.gov' <Tom.Wheeler@fcc.gov>; 'Zachary.Katz@fcc.gov' <Zachary.Katz@fcc.gov>; 'Amy.Bender@fcc.gov' <Amy.Bender@fcc.gov>; 'Nicholas.Degani@fcc.gov' <Nicholas.Degani@fcc.gov>; 'nick.degani@fcc.gov' <nick.degani@fcc.gov>; 'Phillip Okin' <pokin@giantpackaging.com>; 'Deena Shetler' <Deena.Shetler@fcc.gov>; 'martha\_tomich@cad.uscourts.gov' <martha\_tomich@cad.uscourts.gov>; 'Phillip Okin' <pokin@giantpackaging.com>; 'phillo@giantpackage.com' <phillo@giantpackage.com>; ray@grimes4law.com; Deena Shetler <Deena.Shetler@fcc.gov>  
**Subject:** RE: Richard Brown--please comment....

Richard

In your view AT&T counsel Frederick Whitmer's letter of February 6<sup>th</sup> 1995 asserted that under the tariff plan obligations must transfer and constituted a 15 days' written denial of the Inga to PSE traffic only transfer? You must really think the FCC staff are all morons.

It was an obvious "fraudulent use warning" asserting that under the tariff plan obligations don't transfer on the Inga to PSE traffic only transfer and obviously **wasn't a denial of anything!**

Did you actually believe that petitioners were just going to allow AT&T to make such blatantly false statements without pointing out AT&T's statement is nonsense?

Deena--- This one is an absolute layup. The FCC can immediately rule the Inga to PSE traffic only transfer having not been denied in writing by AT&T within 15 days under 2.1.8 (c) should have been processed.

Please respond.

Thank you

Al Inga

Group Discounts, Inc.

**From:** AL [mailto:townnews@optonline.net]  
**Sent:** Wednesday, September 14, 2016 11:17 AM  
**To:** 'Brown, Richard H.' <rbrown@daypitney.com>  
**Cc:** 'ray@grimes4law.com' <ray@grimes4law.com>; Deena Shetler <Deena.Shetler@fcc.gov>  
**Subject:** RE: Richard Brown--please comment....

Richard

Thank you for confirming receipt. I will wait a few days for AT&T to respond before uploading emailed comments.

Al Inga

Group Discounts, Inc.

**From:** Brown, Richard H. [<mailto:rbrown@daypitney.com>]

**Sent:** Wednesday, September 14, 2016 10:06 AM

**To:** 'AL' <[townnews@optonline.net](mailto:townnews@optonline.net)>

**Cc:** [ray@grimes4law.com](mailto:ray@grimes4law.com)

**Subject:** RE: Richard Brown--please comment....

Received

**From:** AL [<mailto:townnews@optonline.net>]

**Sent:** Wednesday, September 14, 2016 9:28 AM

**To:** Brown, Richard H.

**Cc:** [nende@tlgdc.com](mailto:nende@tlgdc.com); [Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov); [laynede@dor.state.fl.us](mailto:laynede@dor.state.fl.us); [DORPTO@dor.state.fl.us](mailto:DORPTO@dor.state.fl.us); [PTODirector@dor.state.fl.us](mailto:PTODirector@dor.state.fl.us); [eric.botker@fcc.gov](mailto:eric.botker@fcc.gov); [Amy.Bender@fcc.gov](mailto:Amy.Bender@fcc.gov); [David.Gossett@fcc.gov](mailto:David.Gossett@fcc.gov); [Deanne.Erwin@fcc.gov](mailto:Deanne.Erwin@fcc.gov); [DORPTO@dor.state.fl.us](mailto:DORPTO@dor.state.fl.us); [Eddie.Lazarus@fcc.gov](mailto:Eddie.Lazarus@fcc.gov); [eric.botker@fcc.gov](mailto:eric.botker@fcc.gov); [Jamilla.ferris@fcc.gov](mailto:Jamilla.ferris@fcc.gov); [Jane.Halprin@fcc.gov](mailto:Jane.Halprin@fcc.gov); [Jay.Keithley@fcc.gov](mailto:Jay.Keithley@fcc.gov); [Jennifer.Tatel@fcc.gov](mailto:Jennifer.Tatel@fcc.gov); [Jessica.Rosenworcel@fcc.gov](mailto:Jessica.Rosenworcel@fcc.gov); [Jim.Bird@fcc.gov](mailto:Jim.Bird@fcc.gov); [john.ingle@fcc.gov](mailto:john.ingle@fcc.gov); [John.Williams2@fcc.gov](mailto:John.Williams2@fcc.gov); [Jonathan.Adelstein@fcc.gov](mailto:Jonathan.Adelstein@fcc.gov); [Julie.Veach@fcc.gov](mailto:Julie.Veach@fcc.gov); [Karen.onyeue@fcc.gov](mailto:Karen.onyeue@fcc.gov); [Kay.Richman@fcc.gov](mailto:Kay.Richman@fcc.gov); [KJMWEB@fcc.gov](mailto:KJMWEB@fcc.gov); [laynede@dor.state.fl.us](mailto:laynede@dor.state.fl.us); [Linda.Oliver@fcc.gov](mailto:Linda.Oliver@fcc.gov); [Madelein.findley@fcc.gov](mailto:Madelein.findley@fcc.gov); [Matthew.Berry@fcc.gov](mailto:Matthew.Berry@fcc.gov); [MeredithAttwell.Baker@fcc.gov](mailto:MeredithAttwell.Baker@fcc.gov); [Michael.Copps@fcc.gov](mailto:Michael.Copps@fcc.gov); [Mignon.Clyburn@fcc.gov](mailto:Mignon.Clyburn@fcc.gov); [Mike.ORielly@fcc.gov](mailto:Mike.ORielly@fcc.gov); [Nicholas.Degani@fcc.gov](mailto:Nicholas.Degani@fcc.gov); [Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov); [Randolph.Smith@fcc.gov](mailto:Randolph.Smith@fcc.gov); [Richard.Welch@fcc.gov](mailto:Richard.Welch@fcc.gov); [Robert.McDowell@fcc.gov](mailto:Robert.McDowell@fcc.gov); [robert.ratcliffe@fcc.gov](mailto:robert.ratcliffe@fcc.gov); [Sharon.Gillett@fcc.gov](mailto:Sharon.Gillett@fcc.gov); [Sharon.Kelley@fcc.gov](mailto:Sharon.Kelley@fcc.gov); [Stephanie.Weiner@fcc.gov](mailto:Stephanie.Weiner@fcc.gov); [Suzanne.Tetreault@fcc.gov](mailto:Suzanne.Tetreault@fcc.gov); [thomas.wheeler@fcc.gov](mailto:thomas.wheeler@fcc.gov); [Tom.Wheeler@fcc.gov](mailto:Tom.Wheeler@fcc.gov); [Zachary.Katz@fcc.gov](mailto:Zachary.Katz@fcc.gov); [Amy.Bender@fcc.gov](mailto:Amy.Bender@fcc.gov); [Nicholas.Degani@fcc.gov](mailto:Nicholas.Degani@fcc.gov); [nick.degani@fcc.gov](mailto:nick.degani@fcc.gov); [Nancy.Dunn@cad.uscourts.gov](mailto:Nancy.Dunn@cad.uscourts.gov); 'Phillip Okin'; 'Deena Shetler'; [ButscheT@dor.state.fl.us](mailto:ButscheT@dor.state.fl.us); [taxviolations@dor.state.fl.us](mailto:taxviolations@dor.state.fl.us); [martha\\_tomich@cad.uscourts.gov](mailto:martha_tomich@cad.uscourts.gov); Phillip Okin; [phillo@giantpackage.com](mailto:phillo@giantpackage.com); [ray@grimes4law.com](mailto:ray@grimes4law.com); Deena Shetler

**Subject:** RE: Richard Brown--please comment....

Richard please confirm receipt and please comment...

The tariff explicitly states:

“For billing purposes, such penalties shall **reduce any discounts** apportioned to the individual locations under the plan.”

AT&T Sept 1, 2016 comments pg. 26

**billing shortfall charges to end-users** served as a **powerful inducement** for resellers like Petitioners to comply with their obligations.

Powerful Inducement! Richard an end-user with a \$60 bill had about a **\$12 discount**. If the charges are applicable AT&T's **tariffed remedy is to reduce the \$12 discount**.

AT&T put a \$4,000 charge on the end-user who had a \$60 bill. Likewise, a normal \$6,000 user would have received a **\$400,000** surprise bill. This is on their TOLL FREE SERVICE that was used for sales and customer service!

Just putting us out of business was not enough of a tariffed remedy? These businesses believed that if they did not pay the bill they would lose that 800 Number that was printed on all their sales literature on insurance policies etc. You know the **AGITA** that you caused the American Public due to AT&T's "powerful inducement" strategy?

AT&T is incredibly telling the Commission that it **felt justified to violate its tariff** because AT&T believed the TARIFFED INDUCEMENT for the petitioner's customers to lose all their discounts wasn't enough?!!!

AT&T put the charges on the end-user's bills and then blamed petitioners despite the plans being pre June 17<sup>th</sup> 1994 grandfathered and thus the charges should have never been applied in the first place.

Then AT&T told the end-users that AT&T will remove the charges but first you have to sign a document to say you were slammed and then we will remove the charges but we will also remove all your discounts and can come back to AT&T.

Did you actually write that "powerful inducement" comment to the FCC with a straight face?

When the FCC determines that AT&T used an illegal billing remedy to intentionally destroy the relationship between petitioners and its customers and AT&T appeals it to the DC Circuit -----do you think the DC Circuit is going to agree with causing massive panic to 10,000 USA businesses because AT&T wasn't satisfied with the tariffed remedy--- AT&T felt there needed to be a more of a "powerful inducement" to meet revenue commitments? We are not even talking about real AT&T costs—we're talking revenue commitments.

The word inducement means that we would have known in advance what AT&T intended to do; but obviously petitioners did not anticipate AT&T was going to intentionally violate its tariff with an illegal billing remedy----- so how was that a "powerful inducement" anyway?

Or what AT&T really meant was---- AT&T wanted to not only put petitioners out of business (unlawfully) but AT&T wanted to put the charges on the businesses bills to make sure AT&T totally destroyed the relationship petitioners had with its customers.

Explain AT&T's position to Commission and then I will upload the email comments in the 06-210 case file.

Al Inga President

Group Discounts, Inc.

# **EXHIBIT B**

**From:** Al Inga [mailto:ajdmm@optonline.net]

**Sent:** Monday, February 01, 2016 8:42 AM

**To:** 'Deena Shetler' <Deena.Shetler@fcc.gov>; ray@grimes4law.com; **Brown, Richard**  
**<rbrown@daypitney.com>**

**Cc:** 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'Ajit Pai' <Ajit.Pai@fcc.gov>; 'Jessica Rosenworcel' <Jessica.Rosenworcel@fcc.gov>; 'Robert McDowell' <Robert.McDowell@fcc.gov>; 'Kay Richman' <Kay.Richman@fcc.gov>; 'Sharon Kelley' <Sharon.Kelley@fcc.gov>; 'Jane Halprin' <Jane.Halprin@fcc.gov>; 'Julie Veach' <Julie.Veach@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Sharon Gillett' <Sharon.Gillett@fcc.gov>; 'MeredithAttwell.Baker@fcc.gov' <MeredithAttwell.Baker@fcc.gov>; 'Michael.Copps@fcc.gov' <Michael.Copps@fcc.gov>; 'Jonathan.Adelstein@fcc.gov' <Jonathan.Adelstein@fcc.gov>; 'Eddie.Lazarus@fcc.gov' <Eddie.Lazarus@fcc.gov>; 'Zachary Katz' <Zachary.Katz@fcc.gov>; 'thomas.wheeler@fcc.gov' <thomas.wheeler@fcc.gov>; 'Mike ORielly' <Mike.ORielly@fcc.gov>; 'Mignon Clyburn' <Mignon.Clyburn@fcc.gov>; 'Jessica Rosenworcel' <Jessica.Rosenworcel@fcc.gov>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'Jane Halprin' <Jane.Halprin@fcc.gov>; 'Julie Veach' <Julie.Veach@fcc.gov>; 'Kay.Richman@fcc.gov' <Kay.Richman@fcc.gov>; 'KJMWEB@fcc.gov' <KJMWEB@fcc.gov>; 'Matthew Berry' <Matthew.Berry@fcc.gov>; 'robert.ratcliffe@fcc.gov' <robert.ratcliffe@fcc.gov>; 'Sharon Kelley' <Sharon.Kelley@fcc.gov>; 'Tom Wheeler' <Tom.Wheeler@fcc.gov>; 'Suzanne Tetreault' <Suzanne.Tetreault@fcc.gov>; 'David Gossett' <David.Gossett@fcc.gov>; 'Jennifer Tatel' <Jennifer.Tatel@fcc.gov>; 'Karen.onyeue@fcc.gov' <Karen.onyeue@fcc.gov>; 'Stephanie Weiner' <Stephanie.Weiner@fcc.gov>; 'Madelein.findley@fcc.gov' <Madelein.findley@fcc.gov>; 'Jim Bird' <Jim.Bird@fcc.gov>; 'Jamilla.ferris@fcc.gov' <Jamilla.ferris@fcc.gov>; 'John Williams' <John.Williams2@fcc.gov>; 'Linda Oliver' <Linda.Oliver@fcc.gov>; 'Richard Welch' <Richard.Welch@fcc.gov>; 'john.Ingle@fcc.gov' <john.Ingle@fcc.gov>; 'Randolph Smith' <Randolph.Smith@fcc.gov>; 'Pamela Arluk' <Pamela.Arluk@fcc.gov>; 'Jay Keithley' <Jay.Keithley@fcc.gov>; 'eric.botker@fcc.gov' <eric.botker@fcc.gov>; 'ray@grimes4law.com' <ray@grimes4law.com>; 'Deena Shetler' <Deena.Shetler@fcc.gov>

**Subject:** RE: FCC 1995 Order--"transcends the scope of this proceeding." we therefore order AT&T to comply with these voluntary commitments.

Deena

AT&T's 1.22.16 letter responded to my counsels' 1.18.16 letter. My counsel will now be responding to Mr Brown's 1.22.16 letter and we will upload to FCC server.

In the mean-time I had someone read through the FCC 1995 Order and he brought to my attention that the FCC Order explicitly states that it **transcends the scope** of the re-classification to non-dominant carrier proceeding. Additionally it explicitly states it is addressing reseller criticisms ELSEWHERE.

We believe that the commitments proffered by AT&T in its October 5, 1995 Ex Parte Letter contribute to addressing the tariff-related concerns raised by the commenters in this proceeding, and **we therefore order AT&T to comply with these voluntary commitments.**

The FCC 2003 Decision did not consider this 1995 Order because Plaintiffs were not aware of it. Too bad AT&T was not forced to notify its resellers of the Order. CCI and the Inga Companies were one of the largest AT&T customers but AT&T of course kept us in the dark about the FCC 1995 Order. It of course kept Judy Nitche in the dark also leading up to the FCC's 2003 Decision.

Now plaintiffs fully understand why AT&T counsel refused to upload its 1.22.16 letter to the FCC. The 1.22.16 letter basically states the FCC 1995 Order has no authority—even though it explicitly states that it **transcends the scope of this proceeding and explicitly mentions the two tariff section 2.1.8 transfer of service and Discontinuation with and without liability aka restructuring ( the June 17<sup>th</sup> 1994 grandfather duration issue).** **And we therefore order AT&T to comply with these voluntary commitments.**

The FCC 2003 Decision stated that plaintiff's plans were pre June 17<sup>th</sup> 1994 grandfathered but it was a disputed fact as to the duration of the grandfathering. AT&T took the position within this case that even though plaintiffs had made 3 year commitments AT&T was considering the plans were no longer grandfathered after they were restructured. The 1995 FCC Order clarifies the "disputed fact" as it does not impose any time on being grandfathered. If you are grandfathered you are grandfathered as long as the plan is in existence.

Additionally attached here is an AT&T tariff page which shows the CSTP plans in August 1996 still recognized the June 17<sup>th</sup> 1994 grandfather immunity exemption from discontinuation with liability. AT&T's actions were done as if the tariff stated that if you restructure your plan you automatically become a post June 17<sup>th</sup> plan. The fact that the June 17<sup>th</sup> 1994 exemption is within the discontinuation of a CSTP tariff section 2 years after the June 17<sup>th</sup> 1994 exemption is conclusive that pre June 17<sup>th</sup> ordered plans are still exempt. In other words if AT&T's position

was that a pre June 17<sup>th</sup> 1994 plan becomes a non-grandfathered plan then the 1996 version of discontinuance would have to explicitly state : however if you restructure your plan in 1985 you no longer are a pre June 17<sup>th</sup> 1994 plan. Of course by law if the tariff is not explicit it must be ruled against the carrier.

In any event the FCC 1995 Order **does not impose any time restriction to the length of grandfathering**. Plaintiff's plans were hit with the charges in June 1996. The attached tariff shows 2 months later in August 1996 AT&T tariffs were still exempting pre June 17<sup>th</sup> 1994 Ordered plans. So it is conclusive by both AT&T tariff and by FCC 1995 Order, AT&T violated its tariff.

AT&T knows that as it would not have paid cash to my co-plaintiff CCI and not pursue the collection of the \$80 million in charges placed upon the end-users if those charges were lawful.

The placement of the unlawful penalties was in and of itself a tariff violation as AT&T under the tariff can only remove the end users discount when AT&T is doing the billing. The charges have to go to AT&T's customer (CCI corporate account).

**Below is a work in progress....that my counsel will include in his response to Mr Brown.**

**The FCC's 1995 Order Directed at AT&T's Pervasive Violations  
of Section 2.1.8 and the Pre June 17<sup>th</sup> 1994 Shortfall and Termination Charges Immunity  
Provision**

The FCC 1995 Order para 133-137: is here as Exhibit C

FULL ORDER: [https://transition.fcc.gov/Bureaus/Common\\_Carrier/Orders/1995/fcc95427.txt](https://transition.fcc.gov/Bureaus/Common_Carrier/Orders/1995/fcc95427.txt)

FCC 1995 Order para 134

As a general practice, **AT&T grandfathers both existing customers and subscribed customers** (i.e., customers who have submitted a signed order for service) when it introduces a change to a term plan (including Contract Tariffs, term plans under Tariffs 1, 2, 9, and 11, Tariff 12 Options and Tariff 15 CPPs), and **it commits to continue that process**.

As the FCC and Judge Politan stated Plaintiffs plans were Pre June 17<sup>th</sup> 1994 grandfathered and the FCC Order covers tariff No 2. which is the tariff at issue.

FCC 1995 Order para 134 Continued

In exceptional cases, however, grandfathering may not be appropriate either because: (1) a change is necessitated by typographical errors, a service inadvertently priced below costs, rate changes where no individual rates

(post-discount) are increased, or other comparable circumstances, or (2) the change is necessary to bring clarity to a non- rate term or condition, where it is necessary to treat all customers alike (such as a change to the provisions for how orders are processed, but not including changes to the body of Contract Tariffs, Tariff 12 Options or Tariff 15 CPPs). In such circumstances, AT&T commits for a twelve-month period to **offer its customers the following additional protections** not required of non-dominant carriers: - where AT&T **makes any change to an existing term plan**, AT&T will afford the affected customers 5 days meaningful advance notice of the tariff filing to give the customer the opportunity to object; provided, **however, that for changes to discontinuance with or without liability, deposits and advance payments, or transfer or assignment of service, AT&T will file on 14-days' notice.**

(AT&T would have the unaffected right to change underlying tariff rates -- such as a general change to SDN rates -- unless the term plan protected the customer from such changes.) Where the affected customer(s) agrees to the revision, AT&T will note that agreement in its transmittal letter and file the change on 1 day's notice. **Where the affected customer objects to the change, AT&T will file the change with the Commission on 6 days' notice. With respect to the 14 or 6 days notice filings, the substantial cause test will be applicable to the same extent as it is today.**

The 1995 FCC Order explicitly covers “discontinuance with or without liability” (aka restructuring) and transfer or assignment of service (which is section 2.1.8). Whether or not a plan gets hit with shortfall and termination charges depends upon whether the plan was ordered prior to June 17<sup>th</sup> 1994. The above passage mandates that the substantial cause test is applicable when the customer objects to the change—which is obviously the case with plaintiffs. This means as long as plaintiffs owned these plans they would be grandfathered and penalty immune.

AT&T’s 1.22.16 letter states:

The October 23, 1995 Order was issued as part of the FCC’s decision to reclassify AT&T as a non-dominant carrier in certain markets; it was not issued in connection with this case.

The FCC 1995 Order explicitly addresses that AT&T was being criticized by resellers for not adhering to the Pre June 17<sup>th</sup> 1994 Discontinuance w/o liability provision and the section 2.1.8. It explicitly states it covers criticisms within the FCC’s 1995 reclassification case “**and elsewhere.**”

FCC 1995 Order at 134:

134. Finally, we note that AT&T has voluntarily committed to implement certain measures that are designed to address criticisms of its business practices that resellers have raised in this proceeding **and elsewhere**. AT&T represents that the following reflects an agreement with the Telecommunications Resellers Association, and AT&T has committed to comply with this agreement.

The “and elsewhere” reference is obviously regarding plaintiff’s case on these same issues. The FCC had knowledge of plaintiff’s case due to AT&T’s Tr8179 filing at the FCC on February 16<sup>th</sup> 1995. The same Charles Hunter counsel that represented the Telecom Resellers Association was involved in petitions to reject Tr.8179 in plaintiff’s case.

FCC 1995 Order at 136 & 137 AT&T is ordered by FCC to comply with grandfathering.

We believe that the commitments proffered by AT&T in its October 5, 1995 Ex Parte Letter contribute to addressing the tariff-related concerns raised by the commenters in this proceeding, and we therefore **order AT&T to comply with these voluntary commitments**.

137. We also note that some of the tariff-related issues raised by commenting parties transcend the scope of this proceeding.

Since the comments in the FCC 1995 proceeding that were raised covered both the Discontinuance w/o liability provision and transfer of service the FCC 1995 Order explicitly states that its 1995 order **“transcends the scope of this proceeding.”** This 1995 FCC Order forces AT&T to commit to grandfather Pre June 17 1994 plans as a condition for obtaining the benefit of being reclassified as a non-dominant carrier. The fact that AT&T’s commitment to grandfather the plans is within the FCC’s reclassification Order does not in any way diminish the FCC Order’s impact on plaintiff’s case as the FCC1995 order stated.

FCC’s 2003 Decision pg. 2 para 2 clearly stated the plans were pre June 17<sup>th</sup> 1994:

**“Prior to June 17, 1994**, the Inga Companies completed and signed AT&T’s “Network Services Commitment Form” for WATS under AT&T’s Customer Specific Term Plan II (CSTP II), a tariffed plan, which offered volume discounts off AT&T’s regular tariffed rates.”

AT&T 1.22.16 Letter:

It has nothing to do with the issue referred on primary jurisdiction grounds by the District Court in this case, and has no impact on any liability issues between AT&T and the Inga Companies.

The controversial issue before the FCC was 2.2.4 Fraudulent use. AT&T claimed it could rely upon 2.2.4 fraudulent to deny the Jan 1995 traffic transfer. AT&T's fraudulent use assertion was that AT&T suspected that CCI would not be able to meet the revenue commitment on the non-transferred plan and be deprived of collecting shortfall charges.

The June 17<sup>th</sup> 1994 discontinuation w/o liability provision, also known as restructuring, obviously was already in the tariff prior to AT&T's Jan 1995 reliance upon fraudulent use. AT&T could not possibly suspect that CCI would be deprived of collecting shortfall when the plans—as Judge Politan—clearly understood could be discontinued w/o liability and restructured.

Judge Politan clearly understood that the parties agreed that CCI must keep its revenue and time commitment but he noted the plans were immune from these charges as they were pre June 17<sup>th</sup> 1994 Grandfathered and thus immune from the shortfall and termination charges.

Not only was AT&T's sole defense of fraudulent use denied by the FCC due to the illegal remedy AT&T used; AT&T's 2.2.4 fraudulent use defense was also meritless to begin with as Judge Politan understood the plans were ordered prior to June 17<sup>th</sup> 1994 and thus were penalty immune---and that is why he denied the security deposit and when he ordered the traffic to be transferred in March 1996.

A) Judge Politan: “Suffice it to say that, with regard to pre-June, 1994 plans, methods exist for defraying or erasing liability on one plan by transferring or subsuming outstanding commitments into new and better plans pursuant to AT&T's own tariff.” May 1995 Decision pg. 11

B) Judge Politan: **“Commitments and shortfalls are little more than illusionary concepts in the reseller industry—concepts which constantly undergo renegotiation and restructuring.** The only “tangible” concern at this juncture is the service AT&T provides. The Court is satisfied that such services and their costs are protected. To the extent however that AT&T's demand for fifteen million dollars' security is **premised on the danger of shortfalls,** the Court finds that threat neither pivotal to the instant injunction

**nor properly substantiated by AT&T.** March 1996 Politan Decision (page 19 para 1)

C) Judge Politan: “In answer to the court’s questions at the hearing in this matter, Mr. Inga set forth certain methods for restructuring or refinancing by which resellers can and do **escape termination and also shortfall charges** through renegotiating their plans with AT&T.”

It is absurd for AT&T’s 1.22.16 letter to state that AT&T not adhering to the June 17<sup>th</sup> 1994 discontinuation w/o liability provision has nothing to do with AT&T sole defense of fraudulent use. Obviously AT&T’s suspecting fraudulent use in Jan 1995 was meritless—even if it met the 15 days statute of limitation—that it did not. Judge Politan stated that AT&T’s demands based upon the premise of CCI’s shortfalls was not substantiated by AT&T.

AT&T 1.22.16 Letter:

**AT&T agreed generally to “grandfather” existing customers if AT&T made changes to term plans under various tariffs,** and also that for certain changes, AT&T would provide certain notice, depending on whether the affected customers objected to the proposed changes.

Yes AT&T “agreed to grandfather existing customers when it made changes to term plans.” In addition AT&T agreed that it would have to adhere to the substantive cause test. So any changes in the tariff would be grandfathered. Plaintiff’s plans were pre June 17<sup>th</sup> 1994 ordered as Judge Politan and the FCC stated so it absolutely affects the merits of AT&T raising a fraudulent use defense. Simply put—AT&T can’t reasonably suspect shortfall when the plans can be discontinued w/o liability due to being grandfathered pre June 17<sup>th</sup> 1994 plans. AT&T was required under FCC Order to continue grandfathering the plans. At exhibit D we see June 17<sup>th</sup> 1994 plans are exempt under the discontinuation with or without liability of a CSTPII tariff provision. The FCC 1995 Order committed AT&T to the substantial cause test and to continue grandfathering the pre June 17<sup>th</sup> 1994 plans.

Judge Politan’s second Decision was in March of 1996 that ordered the traffic transferred from the former customer CCI to the new Customer PSE. AT&T appealed that decision and maintained its sole defense of “fraudulent use” claiming it suspected it would be deprived of the collection of CCI’s plans shortfall charges. To assert that fraudulent use defense AT&T conceded the revenue commitment must stay with CCI.

AT&T appealed Judge Politan’s March 1996 Decision based upon AT&T’s primary jurisdiction argument. It is now discovered that the primary jurisdiction argument appeal was done despite already being under FCC Order as of October 1995. Obviously Judge Politan never saw the October 1995 FCC Order, nor did the Third Circuit in 1996. AT&T already had its FCC primary jurisdiction resolution. Additionally Exhibit D is effective 8.29.96 and **still** it is exempting pre

June 17<sup>th</sup> 1994 plans. The FCC 1995 Order committed AT&T to grandfather the plans as long as the reseller owned the plans.

AT&T 1.22.16 letter at footnote 4:

AT&T disputes that there has been adjudication of whether the plans are pre or post-June 17, 1994. The FCC's October 17, 2003 Order did not resolve the dispute, labeling it a fact issue. (See October 17, 2003 Order at para 20 n.94).

There was no disputed fact that the plans were ordered prior to June 17<sup>th</sup> 1994 and thus grandfather from shortfall and termination charges as they could be discontinued w/o liability. What was the disputed fact was how many restructures w/o liability can a three year CSTP plan have.

FCC Decision FN 94:

Finally, we refuse the parties' request that we declare whether "pre-June 17, 1994 CSTP II plans, **as are involved here**, may never have shortfall charges imposed, as long as the plans are restructured prior to each one-year anniversary." See Joint Motion for Expedited Consideration at 2; Opposition at 14-15; Reply at 25. Declaratory relief on this issue – **which also was not referred to us by the district court** – is inappropriate because whether CCI's plans were pre- or post-June 17, 1994 plans is a disputed fact. Compare *id.* with Opposition at 14 n.13.

The FCC 1995 Order which the FCC was not presented with and thus did not consider, resolves the disputed fact of how long the plans were grandfathered for. It Orders AT&T to continue the grandfathering of the plans. Furthermore it states that even in exceptional cases AT&T was to extend the grandfathering for an additional year from the October 23, 1995 FCC Order. Therefore it is an undisputed fact that AT&T unlawfully inflicted shortfall and termination charges on the CSTP plans on June 10<sup>th</sup> 1996. So at the very minimum the plans could be discontinued w/o liability restructured up to October 23 1996. Therefore when considering the 1995 FCC Order there is **no longer a disputed fact to be resolved** when taking the FCC 1995 Order into consideration.

The FCC 1995 Order defeats AT&T's sole defense of fraudulent use on its merits for suspecting shortfall charge on Pre June 17<sup>th</sup> 1994 grandfathered plans. Additionally plaintiffs filed a supplemental complaint on Jan 3<sup>rd</sup> 1997 after AT&T unlawfully inflicted the plans with the shortfall and termination charges on June 10<sup>th</sup> 1996. The FCC Oct 1995 Order which transcended that case is conclusive it was unlawful to apply shortfall and termination charges in June 1996.

Additionally, AT&T itself states that there was a disputed fact regarding the Pre June 17 1994 provision. Plaintiffs do not see any disputed fact now that the FCC 1995 Order has been discovered. As AT&T is aware if there are any disputed facts they must be handled by the NJFDC. So threatening my firm with sanctions for going back to the NJFDC when the FCC itself states any disputed fact must be handled by the NJFDC seems uncalled for.

**From:** Al Inga [<mailto:ajdmm@optonline.net>]

**Sent:** Friday, January 29, 2016 1:22 PM

**To:** **Brown, Richard**; 'Deena Shetler'

**Cc:** [ray@grimes4law.com](mailto:ray@grimes4law.com); 'john.Ingle@fcc.gov'; 'Ajit Pai'; 'Jessica Rosenworcel'; 'Robert McDowell'; 'Kay Richman'; 'Sharon Kelley'; 'Jane Halprin'; 'Julie Veach'; 'KJMWEB@fcc.gov'; 'Sharon Gillett'; 'MeredithAttwell.Baker@fcc.gov'; 'Michael.Copps@fcc.gov'; 'Jonathan.Adelstein@fcc.gov'; 'Eddie.Lazarus@fcc.gov'; 'Zachary Katz'; 'thomas.wheeler@fcc.gov'; 'Mike ORIelly'; 'Mignon Clyburn'; 'Jessica Rosenworcel'; 'robert.ratcliffe@fcc.gov'; 'eric.botker@fcc.gov'; 'Jane Halprin'; 'Julie Veach'; 'Kay.Richman@fcc.gov'; 'KJMWEB@fcc.gov'; 'Matthew Berry'; 'robert.ratcliffe@fcc.gov'; 'Sharon Kelley'; 'Tom Wheeler'; 'Suzanne Tetreault'; 'David Gossett'; 'Jennifer Tatel'; 'Karen.onyeue@fcc.gov'; 'Stephanie Weiner'; 'Madelein.findley@fcc.gov'; 'Jim Bird'; 'Jamilla.ferris@fcc.gov'; 'John Williams'; 'Linda Oliver'; 'Richard Welch'; 'john.Ingle@fcc.gov'; 'Randolph Smith'; 'Pamela Arluk'; 'Jay Keithley'; 'eric.botker@fcc.gov'; 'ray@grimes4law.com'; 'Deena Shetler'

**Subject:** RE: Deena--FCC Server uploaded for FCC consideration of Plaintiffs Motion

Deena

Please review the content.

It is clear that AT&T counsels intent was that its letter was for Judge Wigenton's review and AT&T counsels knew better than try the "All obligations" fraud on the FCC.

The NJFDC needs to clearly understand that the question of which obligations transfer is not within the scope of the Third Circuit referral as per the FCC Jan 12<sup>th</sup> 2007 Order.

The NJFDC needs to understand the FCC Oct 23<sup>rd</sup> 1995 Order has authority over plaintiffs CCI-PSE transaction.

AT&T counsels need to be sanctioned substantially for obvious intentional misrepresentations with attempts to cover-up.

Thank you for your valuable time.

Al Inga

Group Discounts, Inc.

# EXHIBIT C

**From:** AL [<mailto:townnews@optonline.net>]  
**Sent:** Monday, October 03, 2016 5:54 PM  
**To:** Brown, Richard <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'Pamela.Arluk@fcc.gov' <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>  
**Cc:** ray@grimes4law.com; Phillip Okin ([pokin@giantpackaging.com](mailto:pokin@giantpackaging.com)) <[pokin@giantpackaging.com](mailto:pokin@giantpackaging.com)>; 'phillo@giantpackage.com' <[phillo@giantpackage.com](mailto:phillo@giantpackage.com)>  
**Subject:** RE: Declaratory Ruling Request that AT&T did not respond to....

Richard

Petitioners should be able to respond to AT&T's 9.30.16 comments by Wed.

AT&T's 9.30.16 Comments did not cover this Declaratory Ruling request that was included within petitioners the June 23<sup>rd</sup> 2016 filing. You are not forced to comment. It will just be considered no comment.

“Did AT&T violate its Tariff Number 2 by inflicting termination charges on the 4 Inga Company plans in June 1996 and 800 Services, Inc.'s plan in September 1995 that were CSTPII/RVPP (EBO) plans that were under 3 year commitments considering the non-disputed fact and AT&T's own concession that these plans were never terminated by the 5 petitioners.”

**From:** AL [<mailto:townnews@optonline.net>]  
**Sent:** Thursday, September 15, 2016 11:28 AM  
**To:** Brown, Richard <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'Pamela.Arluk@fcc.gov' <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>  
**Cc:** [ray@grimes4law.com](mailto:ray@grimes4law.com)  
**Subject:** RE: Declaratory Ruling Request that AT&T did not respond to....

Richard

I can't imagine what AT&T's comments will be! The AT&T/CCI settlement was July 1997 and that document explicitly states the plans were not terminated until that date. So obviously applying termination charges on non-terminated plans in June 1996 was a clear violation.

I can't wait for AT&T's response to this one. It may be more absurd than the “powerful inducement” rationale!

Al Inga

Group Discounts, Inc.

**From:** AL [<mailto:townnews@optonline.net>]  
**Sent:** Thursday, September 15, 2016 10:42 AM  
**To:** Brown, Richard <[rbrown@daypitney.com](mailto:rbrown@daypitney.com)>; Deena Shetler <[Deena.Shetler@fcc.gov](mailto:Deena.Shetler@fcc.gov)>; 'Pamela.Arluk@fcc.gov' <[Pamela.Arluk@fcc.gov](mailto:Pamela.Arluk@fcc.gov)>  
**Cc:** [ray@grimes4law.com](mailto:ray@grimes4law.com)  
**Subject:** Declaratory Ruling Request that AT&T did not respond to....

Greetings

There were two sets of Declaratory Ruling Requests and then a correction and this may have caused AT&T to miss responding to one of the DR requests. The following declaratory ruling request that AT&T did not respond to was in the June 23<sup>rd</sup> 2016 filing.

This was it:

#### **Declaratory Ruling Number IV**

“Did AT&T violate its Tariff Number 2 by inflicting termination charges on the 4 Inga Company plans in June 1996 and 800 Services, Inc.’s plan in September 1995 that were CSTPII/RVPP (EBO) plans that were under 3 year commitments considering the non-disputed fact and AT&T’s own concession that these plans were never terminated by the 5 petitioners.”

Based upon the two DR request filings petitioners will give AT&T the benefit of the doubt and assume that AT&T just missed it and allow AT&T to comment. Petitioners will also be filing 2 additional DR Requests dealing with AT&T Counsel Fash permanent denial of use 3.3.1.Q bullet 4 based on fraudulent use and section 2.5.7 circumstances beyond the customers control was requested and never denied but AT&T hit the plans anyway. These are based upon non-disputed facts so the additional 3 DR requests can be commented on.

The DR Requests that AT&T did respond to are below.

#### **Declaratory Ruling Request I**

“Did AT&T violate the FCC’s Oct 23<sup>rd</sup> 1995 Order by not allowing its customers to maintain for [a] minimum of 3 years its pre June 17, 1994 terms and conditions by not allowing petitioners to use the discontinuation without liability provision under Tariff No. 2., on its 3 years CSTPII/RVPP (EBO) plan commitment?”

#### **Declaratory Ruling Request II**

“AT&T under the CSTPII/RVPP Enhanced Billing Option billed petitioner’s end-user locations and were inflicted shortfall and termination charges on petitioner’s end-user locations far in excess of the discounts each end- user location was receiving. Under AT&T’s Tariff No 2 within section 3.3.1Q -bullet 10 it states for billing purposes AT&T can only remove the discounts. Therefore, would exceeding the location discount constitute an illegal AT&T billing remedy and thus regardless whether the charges were permissible AT&T wouldn’t be able to rely upon its charges?”

### **Declaratory Ruling Request III**

“For plans that were ordered prior to June 17, 1994 and requested under the discontinuation without liability provision, interpret the duration of the immunity period from being charged pro rata shortfall and termination charges on a CSTPII/RVPP (EBO) plan commitment of 3 years?”<sup>107</sup>

### **Declaratory Ruling Request IV**

“The Inga Companies plans on January 30, 1995, under tariff section 2.1.8., directly transferred end-user locations without the plan being transferred to Public Service Enterprises (PSE). Did AT&T violate section 2.1.8(c) by not transferring the Inga Companies designated locations due to AT&T’s conceded failure to issue a written denial within 15 days?”

### **Declaratory Ruling Request V**

“In January 1995 did AT&T’s Tariff No 2 Section 3.3.1Q bullet 4 allow petitioners to move the designated end-user locations by deleting the locations from petitioners plans and adding those locations to PSE’s plan) and thus would it result in plaintiff’s ability to keep its plans and its revenue and time commitments associated with the non-transferred plans?

### **Declaratory Ruling Request VI**

“Did AT&T’s complete shutdown of section 2.1.8 to all traffic only transfers, of any quantities of locations transferred, to prevent all traffic only, non-plan transfers, constitute an illegal remedy or any other violation of section 2.1.8?”

### **Declaratory Ruling Request VII**

“Under the FCC’s *October 1995 Order* AT&T was ordered to file with the Commission, within **6** days a **substantial** cause pleading to meet the **substantial** cause test when AT&T customers objected to the following 2 tariff sections: **1)** Transfer or Assignment of Service and **2)** Discontinuation With or Without Liability. Does AT&T’s failure to comply with the FCC 1995 Order to timely file and meet the **substantial** cause test preclude it from raising any defenses under these tariff sections?